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United States

1315

Circuit Court of Appeals

For the Ninth Circuit.

JOSEPH HOTCHNER,

Appellant,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Appellee,

and

JOSEPH HOTCHNER,

Appellant,

vs.

R. E. MORGAN and P. C. LONG,

Appellees.

Transcript of Record.

Upon Appeals from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

FILED

AUG 14 1922

F. D. MONCKTON,
CLERK

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For the Ninth Circuit.

JOSEPH HOTCHNER,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Docket 577

DOCKET.

UNITED STATES DISTRICT COURT.

Title of Case.	Attorneys.
Joseph Hotchner	Carlos P. Griffin.
vs.	Infringement of Letters
Federal Sign System Electric et al.	Patent.
	Chas. E. Townsend.

Date			
Month	Day	Year.	
Nov. 1,	1920.		Filed Complaint. Filed Prae- cipe. Issued Subpoena ad Res. and 1 copy.
Nov. 9,	1920.		Filed Subpoena ad Res. with Marshal's return showing service on Federal Sign Sys- tem Electric on Nov. 3, 1920.
Nov. 23,	1920.		Filed Answer.
Jan. 22,	1921.		Filed Notice of Motion to Amend Answer, etc. Filed Amended Answer.
Feb. 7,	1921.		Filed Notice of Taking Deposi- tions. Ord. Motion to Amend Answer Granted.
Feb. 9,	1921.		Filed Deposition of Paul D. Howse and J. E. Tucker.
Feb. 14,	1921.		Filed and Entered Stipulation and Order in re Depositions de Bene Esse. (O. B. 7, p. 390).

Feb. 17, 1921.	Filed Deposition of C. E. Heft et al. Filed Defts. Exhibits "AA," "BB," "CC," "DD," "EE," "FF."
Mar. 17, 1921.	Filed Depositions.
Aug. 1, 1921.	Ord. Cause Set for Sept. 30.
Sept. 30, 1921.	Ord. Cause Con. to Oct. 25.
Oct. 19, 1921.	Ord. Cause Con. to Nov. 3.
Oct. 31, 1921.	Filed and Entered Stip. and Or- der Continuing Trial. (O. B. 8, p. 77). Ord. Suit Dropped from Calendar.
Nov. 23, 1921.	Filed Notice of Motion Setting Case for Trial.
Nov. 28, 1921.	Ord. Cause Set for Dec. 6.
Dec. 6, 1921.	Ord. Trial, Plff. Allowed to Amend Bill. Filed Affidavit of Simpson. [1*]
Dec. 7, 1921.	Filed Amended Bill. Ord. Plff. Allowed to File Amended Bill; Suit Dismissed, etc.
Dec. 9, 1921.	Filed and Entered Final De- cree. (Eq. Journal 5, p. 78). Made and Filed Enrolled Pa- pers. Dockets.
Dec. 12, 1921.	File Mem. of Costs.
Dec. 15, 1921.	Made Certd. Copy Decree.
Dec. 28, 1921	Filed Petition for Appeal. Filed Assignment of Errors. Filed and Entered Order Fix- ing Bond. (O. B. 8, p. 128). Filed Bond on Appeal.

*Page-number appearing at foot of page of original certified Transcript
of Record.

Jan. 19, 1922. Filed Citation. Filed Praecipe
for Record.

Jan. 28, 1922. Filed Stipulation for Record on
Appeal. Filed Statement of
Evidence. [2]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Defendant.

Amended Bill of Complaint.

To the Honorable the Judges of the District Court
of the United States in and for the Northern
District of the State of California, in Chancery
Sitting.

Joseph Hotchner, a citizen and resident of the
State of California, brings this his bill of complaint
against the Federal Electric Company, a duly or-
ganized and existing California corporation, hav-
ing a regularly established place of business in the
City and County of San Francisco, State of Califor-
nia, and thereupon complainant alleges and avers:

1. That upon the 19th day of October, 1914, com-
plainant did file in the United States Patent Office

application for patent on a certain new and useful improvement in Electric Signs heretofore invented by him and of which he then was the original, first and sole inventor, which improvement was not known or used by others before his invention thereof and which had not been in public use or on sale in the United States for more than two years prior to this application for a patent thereon, nor inscribed in any printed publication more than two years prior to his said patent application and not patented to him or his legal representatives or assigns in any country foreign to the United States on an application filed by him or his legal representatives prior to said patent application.

2. Complainant further alleges and avers that being entitled to a patent upon said electric sign under the provisions of the statutes of the United States upon due proceedings had and all of the requirements of the statutes having been duly complied with, letters patent thereupon was duly issued to. [3] him by the Commissioner of Patents bearing date of March 12, 1918, under the number 1,259,237. Thereupon said letters patent was delivered to complainant whereby and wherein was granted and secured to him, his heirs and assigns for the term of seventeen years from the date thereof, the full and exclusive right to make, use and vend to others to be used said improvements and invention, a description whereof is given in the specifications forming a part of said patent grant, and which patent or a certified copy thereof

is hereby proffered for the inspection of this Honorable Court.

3. That upon the 19th day of October, 1914, complainant did file in the United States Patent Office application for patent on a certain new and useful improvement in Electric Sign heretofore invented by him and of which he then was the original, first and sole inventor, which improvement was not known or used by others before his invention thereof and which had not been in public use or on sale in the United States for more than two years prior to this application for a patent thereon nor described in any printed publication more than two years prior to his said patent application, and not patented to him or his legal representatives or assigns in any country foreign to the United States on an application filed by him or his legal representative prior to said patent application.

4. Complainant further alleges and avers that being entitled to a patent upon said electric sign under the provisions of the statutes of the United States upon due proceedings had and all of the requirements of the statute having been duly complied with, letters patent thereupon was duly issued to him by the Commission of Patents bearing date of September 2, 1919, under the number 1,315,187. Thereupon said letters patent was delivered to complainant whereby and wherein was granted and secured to him, his [4] heirs and assigns for the term of seventeen years from the date thereof, the full and exclusive right to make, use and vend to others to be used, said improvements and inven-

tion, a description whereof is given in the specification forming a part of said patent grant, and which patent or certified copy thereof is hereby proffered for the inspection of this Honorable Court.

5. Complainant further alleges and avers that the said patents and improvements in electric signs have been and are in his exclusive possession and ownership, save for certain licenses to manufacture said signs granted by him to certain duly accredited licensees, which licensees have introduced said signs into wide use, duly marking the signs made by them with the words "Hotchner Patent" together with the date of the patent concerned and that such licenses have proved to be valuable to complainant by reason of the license fees paid to him. That complainant has expended large sums of money in developing and introducing the said electric signs into use and that the public generally has acquiesced in his exclusive rights and privileges as secured by each of said patents and but for the infringement herein complained of, the complainant would now be in undisturbed possession and enjoyment of the exclusive rights and privileges secured to him by each of said patents.

6. Complainant further shows that said defendant, Federal Electric Company, well knowing the premises, and without right, license or other authority and in violation of complainant's said rights under the patents aforesaid, has within the Northern District of the State of California, subsequent to the issue and during the term of the latest of said letters patent, made or caused to be made for use

and has vended to others to be used, a number of electric signs which made conjoint use of the inventions disclosed in each of said patents, one such sign reading "Normal Pharmacy" and being [5] made for A. S. Pencovic and installed and used at 1101 Broadway, Oakland, California, and another such sign reading "Harry Rose, Haberdasher, Al Chase, Clothier," being installed adjacent the Normal Pharmacy sign. How many more such signs defendant has made and sold complainant cannot state, but he prays that defendant may be compelled to discover and disclose the number of such signs made by them which contain substantially the improvements patented to him in each of the above mentioned patents. Complainant further alleges that Tracy W. Simpson is the manager of the Federal Electric Company, and also does business in the name of Federal Sign System Electric, and that bills presented to the purchasers for said signs bear the names Federal Electric Company and Federal Sign System Electric.

Complainant further alleges and avers that defendant, Federal Electric Company persists in the manufacture and sale and offering for sale of electric signs which infringe said letters patent and each of them, and though warned in writing to desist therefrom, threaten to continue to make and vend to be used illuminated signs which infringe each of said patents and complainant further fears that said defendant will continue such infringement upon his exclusive rights in the future, whereby great gains and profits heretofore accruing to com-

plainant, will accrue to defendant which in equity belong to complainant, to his great damage, and complainant has now sustained damages by reason of violation of his rights and will continue to sustain further damages if such infringement be not restrained.

To the end, therefore, that said defendant may, if it can, show why your complainant should not have the relief herein prayed, and may, and according to the best of its knowledge, remembrance, information and belief, but not under oath, answer under oath being expressly waived, full, true, direct and perfect answer make to all and singular the premises, and that defendant may be decreed to [6] account for, and pay over to your orator all gains and profits realized by it, from the unlawful using, making or vending of the improvements vested in your complainant under the patents aforesaid; and in addition thereto, the damages sustained by your orator by reason of such infringement, to be assessed by or under the direction of your Honors, and that your Honors may increase the actual damages to three times the amount of such assessment under the circumstances of the willful and unjust infringement by said defendant, and that defendant may be perpetually restrained by an injunction issuing out of this Honorable Court, from making, using, or vending illuminated signs containing the improvements secured to your orator under said patents, and that your orator have such other or further relief as equity may deem just, together with the costs of this action.

May it please your Honors to grant to complainant not only a writ of injunction, conformable to the prayer of this bill, but also an injunction *pendente lite*, and also a writ of subpoena, directed to the defendant, commanding it at a time certain, under a certain penalty to appear before your Honors, in this Court, then and there to answer truly into this bill of complaint, and to abide by and perform such decree as this Honorable Court may make in the premises.

CARLOS P. GRIFFIN,

Attorney for Plaintiff.

San Francisco, California, December 7, 1921.

[7]

State of California,

City of County of San Francisco,—ss.

Joseph Hotchner, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing and knows the contents thereof, that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

JOSEPH HOTCHNER.

Subscribed and sworn to before me this 7th day of December, A. D. 1921.

[Seal]

HENRY B. LISTER,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Dec. 7, 1921. Walter B.
Maling, Clerk. [8]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL SIGN SYSTEM ELECTRIC (a Corporation), and TRACY W. SIMPSON, Doing Business as FEDERAL ELECTRIC COMPANY,

Defendants.

Amended Answer.

Now come the above-named defendants, Federal Sign System Electric (a Corporation), and Tracy W. Simpson, doing business as Federal Electric Company, and for answer to plaintiff's bill of complaint, deny, admit and aver as follows:

I.

Answering paragraphs 1 and 3 of the bill of complaint, defendants deny that plaintiff, Joseph Hotchner, was the original, first and sole or any inventor of the improvements in Electric Signs alleged to be described and patented in and by the letters patent in suit, or that the same were not known or used by others before his alleged invention thereof, or had not been in public use or on sale in the United States, or described in any printed publications for more than two years prior to his applications for patents thereon.

II.

Answering paragraphs 2 and 4 of the bill of complaint defendant admits that letter patents No. 1,259,237, dated March 12th, 1918, and No. 1,315,187, dated September 2d, 1919, issued to plaintiff, but deny that there was thereby granted to him, his legal representatives and assigns the exclusive or any right [9] to make, use and vend the improvements in electric signs alleged to be covered thereby.

III.

Answering paragraph 5 of the bill of complaint, defendants are without knowledge as to the truth of the allegations therein contained and call upon plaintiff for full proof thereof.

IV.

Answering paragraph 6 of the bill of complaint, defendants deny that they have at any time, in any manner or respect, infringed upon or made unlawful use of any of the alleged improvements patented in and by the letters patents in suit; and further deny that they have made any gains or profits as the result of any unlawful acts, or that plaintiff has been in any manner damaged or injured by any unlawful acts of defendants.

Without waiving any of the matters and things above set forth, but repeating and insisting upon the same, defendants further answering say:

V.

And for a further and particular defense defendants are informed and believe, and so state the fact to be, that the said alleged invention set forth

in letters patent No. 1,259,237 in suit is neither new nor original and does not possess the quality of invention and that said patent is invalid in all respects.

VI.

And for a further and particular defense defendants state that the said Joseph Hotchner was not the original, or first, or any inventor or discoverer of any material or substantial part of the thing patented in said letters patent No. 1,259,237; and that said invention has been previously patented and described, as hereinafter mentioned, by printed publications and letters patents prior to the supposed invention or discovery thereof by the said Joseph Hotchner as follows, to wit: [10]

UNITED STATES LETTERS PATENT.

Little	32,195	April 30, 1861
Jory	218,750	Aug. 15, 1879
McLewee	328,135	Oct. 13, 1885
Haag	390,777	Oct. 9, 1888
Hotchner	769,138	Aug. 30, 1904
Hotchner	769,139	Aug. 30, 1904
Felkin	822,593	June 5, 1906
Hotchner	844,940	Feb. 19, 1907
Rainaud	845,478	Feb. 26, 1907
Norden	881,943	Mar. 17, 1908
Hotchner	883,682	Mar. 31, 1908
Clark	923,769	June 1, 1909
Ellis	931,188	Aug. 17, 1909
Bock	1,085,530	Jan. 27, 1914
Fisk	1,095,321	May 5, 1914

Gentile	1,103,873	July 14, 1914
Wiley & Hough	1,224,253	May 1, 1917
Slick	1,241,292	Sept. 25, 1917
Sorenson & Wesley	1,258,957	Mar. 12, 1918
Cook	1,269,261	June 11, 1918
Williams	1,279,197	Sept. 17, 1918
Walker	1,304,423	May 20, 1919
Van Bloom	1,311,472	July 29, 1919

FOREIGN PATENTS.

Amy (Great Britain)	10,990	June 16, 1900
Hugues Boldes (France)	335,943	Sept. 17, 1903

VII.

Defendants further answering on information and belief [11] say that prior to the date of application of said Joseph Hotchner patent No. 1,259,237 in suit, and prior to the alleged invention thereof by the said Joseph Hotchner, Electric Signs substantially identical with those which have been and are being manufactured and sold by these defendants and complained of by plaintiff herein, were and have been in public use and on sale in this country and were known to, others, and among those who used or had knowledge of said prior use were the following named persons, firms and corporations, at the places set opposite their respective names:

Prismatic Sign Co., Denver, Colorado;

Brumfield Electric Sign Co., San Francisco, California;

H. P. Beem, Seattle, Washington;

Mr. Wallace, 818 Broadway, Los Angeles, California;

Val Blatz Brewery Co., Butte, Montana;

Mr. Archibald Mackenzie, 1290 Bellaire St., Denver, Colorado;

Paul D. Howse, Los Angeles, California;

Hotel Oregon, Portland, Oregon;

C. E. Heft, 480 Mill St., Portland, Oregon;

Val Blatz Brewing Co., 1519-10th St., Denver, Colorado;

and also others, the names and addresses of which are unknown to these defendants at the present time, but defendants pray leave to set forth by amendment to this amended answer said names and addresses when discovered.

VIII.

And for a further and particular defense defendants are informed and believe, and so state the fact to be, that the said alleged invention set forth in letters patent No. 1,315,187 in suit is neither new nor original and does not possess the quality of invention and that said patent is invalid in all respects. [12]

IX.

Further answering said bill of complaint, and for a further and particular defense, defendants are informed and believe, and so state the fact to be, that the said Joseph Hotchner was not the original, or

first, or any inventor or discoverer of any material or substantial part of the thing patented in said letters patent No. 1,315,187; and that said invention has been previously patented and described, as hereinafter mentioned, by printed publications and letters patents prior to the supposed invention or discovery thereof by the said Joseph Hotchner as follows, to wit:

UNITED STATES LETTERS PATENT.

Butt	706,525	Aug. 12, 1902
Butt	707,205	Aug. 19, 1902
Sawyer	827,943	Aug. 7, 1906
Fortmann	1,070,028	Aug. 12, 1913
Anway	1,099,633	June 9, 1914
Abeles	1,155,294	Sept. 28, 1915
Smith	1,194,559	Aug. 15, 1916
Dixon	1,207,721	Dec. 12, 1916
Dye & Clark	1,211,115	Jan. 2, 1917
Gruman	1,274,875	Aug. 6, 1918
Raul & Springer	1,301,741	April 22, 1919
Wilde & Wimmermark	1,314,626	Sept. 2, 1919

and also:

City Ordinance No. 21,308 of City of Seattle,
Washington, approved July 8th, 1909.

X.

Defendants further answering on information and belief say that prior to the date of application of said Joseph Hotchner [13] patent No. 1,315,187 in suit, and prior to the alleged invention thereof by the said Joseph Hotchner, Electric Signs

substantially identical with those which have been and are being manufactured and sold by these defendants and complained of by plaintiff herein, were and have been in public use and on sale in this country and were known to others, and among those who used or had knowledge of said prior use were the following named persons, firms and corporations, at the places set opposite their respective names:

Prismatic Sign Co., Denver, Colorado;

Brumfield Electric Sign Co., San Francisco, California;

H. P. Beem, Seattle, Washington;

Mr. Wallace, 818 Broadway, Los Angeles, California;

Val Blatz Brewery Co., Butte, Montana;

Mr. Mackenzie, Denver, Colorado;

Paul D. Howse, Los Angeles, California;

and also others, the names and addresses of which are at present unknown to these defendants and which, when discovered, these defendants pray leave to insert by amendment to this amended answer.

WHEREFORE, and for the cause aforesaid, these defendants deny the equity of plaintiff's bill herein and all manner of wrongful and unlawful acts wherewith, in the said bill of complaint, these defendants are charged, and further deny the right of plaintiff to the relief or any part thereof alleged against these defendants in said bill of complaint and submit that they should not be compelled to

make any other or further answer than that herein contained.

All of which matter and things these defendants are ready and willing to aver, maintain and prove as this Honorable [14] Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf.

FEDERAL SIGN SYSTEM ELECTRIC
(a Corporation), and TRACY W.
SIMPSON, Doing Business as Federal
Electric Company.

By TRACY W. SIMPSON,
One of the Defendants.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,
Attorneys for Defendants.

Service of copy of the within admitted this 22d
day of January, A. D. 1921.

CARLOS P. GRIFFIN,
For Plaintiff.

[Endorsed]: Filed Jan. 22, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

In the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL SIGN SYSTEM ELECTRIC, a Corporation, and TRACY W. SIMPSON, Doing Business as FEDERAL ELECTRIC COMPANY,

Defendants.

Final Decree Dismissing Bill of Complaint.

This cause having come on to be heard upon the pleadings, proceedings and proofs herein taken and filed on behalf of both parties, and after due proceedings had, it is, upon consideration, ORDERED, ADJUDGED and DECREED as follows:

I.

That the Hotchner patent No. 1,259,237, issued July 30th, 1918, sued on, and particularly with respect to claim 4, is void and the bill is dismissed as to this patent.

II.

That the Hotchner patent No. 1,315,187, issued September 2d, 1919, sued on, and particularly with respect to claims 1, 2 and 3, is void and the bill is dismissed as to this patent.

III.

That the said Hotchner patents No. 1,259,237,

issued July 30th, 1918, and No. 1,315,187, issued September 2d, 1919, even if valid, are neither of them infringed and the bill is dismissed as to each of said patents.

IV.

That the defendants do recover of the plaintiff their costs and disbursements of this suit to be taxed by the Clerk in accordance with the Rules of this Court.

FRANK H. RUDKIN,
Judge.

Dated: December 9th, 1921. [16]

[Endorsed]: Filed and entered Dec. 9, 1921.
W. B. Maling, Clerk. By J. A. Schaertzer, Deputy
Clerk. [17]

In the United States District Court in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,
Complainant,
vs.

R. E. MORGAN, and P. C. LONG, Doing Business
as the AMERICAN ELECTRIC SIGN
COMPANY.

Bill of Complaint.

To the Honorable the Judges of the District Court
of the United States in and for the Northern
District of the State of California, in Chan-
cery Sitting:

Joseph Hotchner, residing in the State of California, and a citizen of the State of California, brings this his bill of complaint against R. E. Morgan and P. C. Long, believed to be citizens of the State of California, and believed to be copartners doing business under the name American Electric Sign Company, in the State of California, at San Francisco.

1. And thereupon your orator complains, alleges and avers that on or before the 19th day of October, 1914, your orator was the original, first and sole inventor of a certain new and useful improvement in illuminated signs, not known or used by others before his said invention thereof, and which had not at the time of his application for a patent thereon been in public use or on sale with his consent or allowance for a period of more than two years prior to October 19, 1914, upon which date your orator did file an application for patent thereon in the United States Patent Office at Washington, D. C.

2. Your orator further alleges and avers that being so the inventor of said improvement in electric signs, after [18] due proceedings had upon the patent application aforesaid, the Commissioner of Patents thereafter allowed said patent, and after your orator had duly complied in all respects with the conditions and requisitions of the laws in such cases provided, and upon the payment of the fees prescribed, the Commissioner of Patents did issue letters patent of the United States for said improvement and invention in illuminated signs, under the seal of the Patent Office, duly signed by the Commis-

sioner of Patents, or his Assistant, acting for him, and bearing date of July 30, 1918, under the Number 1,259,237, and said letters patent were thereafter delivered to your orator whereby was granted and secured to him, his heirs and assigns, for the term of seventeen years from the date thereof, the full and exclusive right of making, using and vending to others to be used, said improvement and invention, a description whereof is given in the specification forming a part of said patent grant, and which patent or a certified copy thereof is hereby preferred for the inspection of this Honorable Court.

3. And your orator alleges and avers that the said improvements, patented as aforesaid, have hitherto been in his exclusive possession being manufactured for him in the Pacific Coast territory by the Novelty Electric Sign Company, his duly accredited licensee, and have been introduced by said licensee into wide use, and said signs, made in accordance with the disclosure of said patent, have proved to be valuable to the public and have been and still are of great value to your orator by reason of the license fees paid to him by his licensee, the Novelty Electric Sign Company. That your orator has expended large sums of money in developing and introducing into use said electric signs, and that the public has generally acquiesced in his exclusive rights and privileges secured by said patent, [19] and that for the infringement herein complained of, your orator would now be in undis-

turbed possession and enjoyment of the exclusive rights and privileges secured to him by said patent.

4. Your orator further shows that the said defendant, and each of them, as your orator is informed and believes, well knowing the premises, without right or authority, and in violation of your orator's said rights under the patent aforesaid, have, within the Northern District of the State of California and since the issue and during the term of said letters patent made or caused to be made for use, and have vended to others to be used, a number of electric signs made in accordance with the disclosure of said patent and the claims thereof, but how many your orator cannot state more than to say that one such sign has been made and sold by the defendants and has been installed at the Northeast corner of Fillmore and Ellis Streets, in the State of California, with the reading, "LUNCH," thereon. Your orator prays that the defendants may be compelled to discover and disclose the number of such signs made by them, which contain substantially the improvements so patented, to your orator, as covered by the letters patent as aforesaid. Your orator further alleges and avers that defendants persist in the making and selling of said patented illuminated signs, though warned in writing to desist, and are now making or causing to be made for sale and use, and are now selling to be used and threatens to continue to make and vend to be used, illuminated signs containing said patented improvements or material parts thereof. And your orator further fears that defend-

ants will continue such infringement upon his exclusive rights in the future, whereby great gains and profits, heretofore accruing to your orator, will accrue to defendants, or either of them, which in equity belong to your orator. And your orator has sustained damages [20] by reason of said violation of his rights, and will sustain further damages if said infringement be not restrained.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed, and may, and according to the best of their knowledge, remembrance, information and belief, but not under oath, answer under oath being expressly waived, full, true, direct and perfect answer make to all and singular the premises, and that defendants may be decreed to account for, and pray over to your orator all gains and profits realized by them, or either of them, from the unlawful using, making or vending of the improvements vested in your orator under the patent aforesaid; and in addition thereto, the damages sustained by your orator by reason of such infringement, to be assessed by or under the direction of your Honors; and that your Honors may increase the actual damages to three times the amount of such assessment under the circumstances of the wilful and unjust infringement by said defendants, and that defendants may be perpetually restrained by an injunction issuing out of this Honorable Court, for making, using or vending illuminated signs containing the improvements secured to your orator under said patent, and that your orator have such

other or further relief as equity may deem just, together with the costs of this action.

May it please your Honors to grant your orator not only a writ of injunction, conformable to the prayer of this bill, but also an injunction *pendente lite*, and also a writ of subpoena, directed to the defendants, and each of them, commanding them at a time certain, under a certain penalty, to appear before your Honors, in this court, then and there to answer truly unto this bill of complaint, and to abide by and perform such decree as this Honorable Court may make in the premises.

CARLOS P. GRIFFIN,

Solicitor and Counsel for Joseph Hotchner. [21]

Jan. 22, 1920.

State of California,

City and County of San Francisco,—ss.

Joseph Hotchner, being duly sworn, deposes and says: That he is the complainant in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

JOSEPH HOTCHNER.

Subscribed and sworn to before me this 22d day of January, A. D. 1920.

[Seal]

HENRY B. LISTER,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jan. 23, 1920. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[22]

In the United States District Court for the North-
ern District of California, Second Division.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

Second Amended Answer.

Come now R. E. Morgan and P. C. Long, defend-
ants in the above-entitled action, and by leave of
Court having first been obtained, file this, their sec-
ond amended answer to the bill of complaint now
on file herein, and for answer to plaintiff's bill of
complaint deny, admit and aver as follows:

I.

Answering paragraph 1 of the bill of complaint
defendants deny that on or before the 19th day of Oc-
tober, 1914, or at any other time, or at all, was Joseph
Hotchner, the complainant in said action, the origi-
nal or the first or the sole inventor of the alleged
improvement of the illuminated sign referred to in
paragraph 1 of his said bill of complaint, and deny
that before said 19th day of October the said alleged
invention was not known or used by others than
said Joseph Hotchner, and deny that before the

said 19th day of October, 1914, the said alleged improvement in illuminated signs had not been in public use or on sale by others than said Joseph Hotchner, and without his consent or allowance.

II.

Answering paragraph II of the bill of complaint these defendants further deny that said Joseph Hotchner is the inventor of said alleged improvement and deny that under the letters patent [23] referred to in paragraph II of said bill of complaint the said complainant was granted and secured for any firm whatever, the full and exclusive or any right of making or using or vending the alleged improvement or invention referred to in said bill; and deny that said letters patent cover any new or useful improvement or invention whatever in illuminated signs, but on the contrary assert and allege that the improvement and invention referred to in said letters patent and disclosed in the claims thereof, were and are not in fact either an improvement upon any device in common and public use theretofore in manufacture of illuminated signs, or constitutes in anywise an invention in illuminated signs.

III.

As to the allegations contained in paragraph III of said bill of complaint, these defendants are without knowledge as to the truth or falsity of the same and placing their denial upon said grounds, they deny each and every of the allegations in said paragraph III contained.

IV.

Answering paragraph IV of the bill of complaint these defendants deny that within the Northern District of the State of California, or elsewhere, or at all, has either of them since the issue of the letters patent referred to in the said bill of complaint caused to be made for use or have sold to others to be used, any electric sign made or sold in violation of any right or authority of the complainant in the premises or in violation of any right or authority of the complainant under the patent referred to in said bill, and your defendants further allege that they have no intention to infringe upon any exclusive rights of said complainant under the patent referred to in the complaint or otherwise in their business of manufacturing and selling electric [24] signs; and they further allege and assert that any and all signs made by them or sold by them are free of any infringement whatever upon any improvement or invention made or owned or controlled by said complainant under any patent whatever or otherwise, and deny that the said complainant is entitled to the control or ownership of any device or improvement or invention as referred to or covered or disclosed in said patent or in the claims or specifications thereof, and deny that said complainant has been damaged at all or will be damaged at all by any act by these defendants or either of them.

Without waiving any of the matters and things above set forth, but repeating and insisting upon the same, defendants further answering say:

V.

And for a further and particular defense defendants are informed and believe, and so state the fact to be, that the said alleged invention set forth in letters patent No. 1,259,237 in suit is neither new nor original and does not possess the quality of invention and that said patent is invalid in all respects.

VI.

And for a further and particular defense defendants state that the said Joseph Hotchner was not the original, or first or any inventor or discoverer of any material or substantial part of the thing patented in said letters patent No. 1,259,237; and that said invention has been previously patented and described, as hereinbefore mentioned, by printed publications and letters patent prior to the supposed invention or discovery thereof by the said Joseph Hotchner as follows, to wit: [25]

UNITED STATES LETTERS PATENT

Little	32,195	April	30, 1861
Jory	218,750	Aug.	15, 1879
McLewee	328,135	Oct.	13, 1885
Haag	390,777	Oct.	9, 1888
Hotchner	769,138	Aug.	30, 1904
Hotchner	769,139	Aug.	30, 1904
Felkin	822,593	June	5, 1906
Hotchner	844,940	Feb.	19, 1907
Rainaud	845,478	Feb.	26, 1907
Norden	881,943	March	17, 1908
Hotchner	883,682	March	31, 1908
Clark	923,769	June	1, 1909

Ellis	931,188	Aug.	17, 1909
Bock	1,085,530	Jan.	27, 1914
Fisk	1,095,321	May	5, 1914
Gentile	1,103,873	July	14, 1914
Wiley & Hough	1,224,253	May	1, 1917
Slick	1,241,292	Sept.	25, 1917
Sorenson & Wesley	1,258,957	March	12, 1918
Cook	1,269,261	June	11, 1918
Williams	1,279,197	Sept.	17, 1918
Walker	1,304,423	May	20, 1919
Van Bloom	1,311,472	July	29, 1919

FOREIGN PATENTS

Amy (Great Britain)	10,990	June	16, 1900
Hugues Boldes (France)	335,943	Sept.	17, 1903.

VII.

Defendants further answering on information and belief say that prior to the date of application of said Joseph Hotchner [26] patent No. 1,259,237 in suit, and prior to the alleged invention thereof by the said Joseph Hotchner, Electric Signs substantially identical with those which have been and are being manufactured and sold by these defendants and complained of by plaintiff herein, were and have been in public use and on sale in this country and were known to others, and among those who used or had knowledge of said prior use were the following named persons, firms and corporations, at the places set opposite their respective names:

Prismatic Sign Co., Denver, Colorado;
Brumfield Electric Sign Co., San Francisco, California;

H. P. Beem, Seattle, Washington;

Mr. Wallace, 818 Broadway, Los Angeles, California;

Val Blatz Brewery Co., Butte, Montana;

Mr. Archibald Mackenzie, 1290 Bellaire St., Denver, Colorado;

Paul D. Howse, Los Angeles, California;

Hotel Oregon, Portland, Oregon;

C. E. Heft, 480 Mill St., Portland, Oregon;

Val Blatz Brewing Co., 1519-10th St., Denver, Colorado;

and also others, the names and addresses of which are unknown to these defendants at the present time, but defendants pray leave to set forth by amendment to this second amended answer said names and addresses when discovered.

WHEREFORE, and for cause aforesaid, these defendants deny the equity of plaintiff's bill herein and all manner of wrongful and unlawful acts wherewith, in the said bill of complaint, these defendants are charged, and further deny the right of plaintiff to the relief or any part thereof alleged against these defendants in said bill of complaint and submit that they should not be compelled to make any other or further answer than [27] that herein contained.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly

pray to be hence dismissed with their reasonable costs in this behalf.

R. E. MORGAN,

P. C. LONG,

By CHAS. E. TOWNSEND,

WM. A. LOFTUS,

Attorneys and Solicitors for Defendants.

Service of copy of the within admitted this 22d day of January, A. D. 1921.

CARLOS P. GRIFFIN,

For Plaintiff.

[Endorsed]: Filed Jan. 22, 1921. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[28]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, Second Division.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. G. LONG,

Defendants.

Final Decree Dismissing Bill of Complaint.

This cause having come on to be heard upon the pleadings, proceedings and proof herein taken and filed on behalf of both parties, and after due proceedings had, it is, upon consideration, ORDERED, ADJUDGED and DECREED as follows:

I.

That the Hotchner patent No. 1,259,237, issued July 30th, 1918, sued on, and particularly with respect to claim 4, is void and the bill is dismissed as to this patent.

II.

That the said Hotchner patent No. 1,259,237, issued July 30th, 1918, even if valid, is not infringed and the bill is dismissed.

III.

That the defendants recover of the plaintiff their costs and disbursements of this suit to be taxed by the clerk in accordance with the Rules of this court.

Dated December 9th, 1921.

FRANK H. RUDKIN,
Judge.

[Endorsed]: Filed and entered Dec. 9, 1921.
W. B. Maling, Clerk. By J. A. Schaertzer, Deputy
Clerk. [29]

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

and

CONSOLIDATED.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL SIGN SYSTEM ELECTRIC and
TRACY W. SIMPSON, Doing Business as
the FEDERAL ELECTRIC COMPANY,
Defendants.

Statement of Evidence.

Tuesday, December 6, 1921.

COUNSEL APPEARING:

For Plaintiff: CARLOS P. GRIFFIN, Esq.

For Defendants: CHARLES E. TOWNSEND,
Esq., and WM. A. LOFTUS, Esq.

Depositions in this case may be read with the same effect in both cases, and the two cases tried together.

The COURT.—The statement was made the other day that only one case would be tried and the decision in one case would follow in the other. You may proceed with the trial; I don't care how you try them.

Mr. GRIFFIN.—It is consented that they be consolidated for the purpose of trial.

We will show, in this connection, that the defendant Long made a sign and installed the same in the city and county, and the [30] defendant Federal Electric Sign System installed a similar sign, in

which the two patents were used conjointly, that being in Oakland.

The COURT.—Is the validity of the patent in question, or is there simply a denial of infringement?

Mr. GRIFFIN.—There were a number of public uses set up and sundry patents are set up, both for the purpose of denying validity, I assume, and also, possibly, the defense of noninfringement will be urged.

Statement by Mr. Loftus during which it was stated:

“If Hotchner contends that his patent is so broad as to cover the use of a row of lights placed on the bottom of an electric sign to illuminate the sidewalk, then we are prepared to show that that patent is invalid.”

The COURT.—You will not have to show that. They might as well claim a patent on a street lamp.

Mr. GRIFFIN.—I would like to say to your Honor that, in looking over the complaint. I discovered there was a mistake in alleging the date of this later patent, that is, alleging its filing date to be September 2, 1919; through an error, or oversight, that date came into the filing date. The filing date should have been October 19, 1914.

That is in the complaint against the Federal Sign System.

Stipulation that the usual printed copies of United States patents may be used without certification.

Deposition of Joseph Hotchner, for Plaintiff.

Thereupon plaintiff called JOSEPH HOTCHNER, who testified as follows:

My name is Joseph Hotchner. I am 54 years old. I live at 1263 Vallejo Street, San Francisco. I am a manufacturer of electric signs since 1891 in Providence, Rhode Island, in New York, and in San Francisco. I am the plaintiff in the case of Hotchner vs. Federal Electric Sign System and also against Morgan and Long. I am the applicant and patentee of the two patents in suit, being [31] Hotchner No. 1,259,237, dated March 12th, 1918, on an application filed October 19th, 1914, and Hotchner patent No. 1,315,187, dated September 2d, 1919, on an application filed October 19th, 1914.

Mr. GRIFFIN.—We are going to undertake to prove infringement in one case, in respect to claim 4 of the defendant's patent, and in respect to claims 1, 2 and 3 of the second patent.

(The documents were here marked, respectively, Plaintiff's Exhibits 1 and 2.)

Mr. GRIFFIN.—I wish to ask the witness what he did in respect to the making of the inventions disclosed in the patent.

Mr. TOWNSEND.—That calls for a conclusion, your honor.

The COURT.—The patent is *prima facie* evidence, isn't it, that he is at least the inventor?

Mr. TOWNSEND.—Yes, your Honor.

The COURT.—I don't think it is necessary to prove that until it is controverted in some way by the other side.

(Deposition of Joseph Hotchner.)

Mr. GRIFFIN.—Very well, your Honor.

Q. Did you ever make any electric signs in accordance with the disclosure of either of these patents? A. I did.

Mr. TOWNSEND.—Just a moment. That is objected to, your Honor, as calling for the conclusion of the witness.

The COURT.—The answer may stand.

Mr. GRIFFIN.—Q. About how many?

A. I could not tell that, I made thousands of them.

Q. Were the signs marked in accordance with the law?

A. They were.

Has that business proven profitable to you?

A. It has.

Mr. TOWNSEND.—That is objected to, your Honor, as immaterial, irrelevant and incompetent.

The COURT.—That is one element tending to show invention. I don't care to go into it to any extent, though. You may proceed.

Mr. GRIFFIN.—Q. Aside from the infringement here [32] complained of, have there been any other infringements of this patent, to your knowledge?

Mr. TOWNSEND.—We object to that as leading and calling for a conclusion.

The COURT.—That calls for a conclusion; I will sustain the objection.

Mr. GRIFFIN.—If your Honor please, in this case it is alleged that these are the only cases that

(Deposition of Joseph Hotchner.)

the patent has not been infringed otherwise than by these defendants.

The COURT.—But you are asking this witness to determine the very question involved here, as to whether or not there has been an infringement of his patent.

Mr. GRIFFIN.—No, your Honor. I am asking him, have there been any other infringements that he knows of than the infringements here complained of.

The COURT.—You are asking him to determine what would constitute an infringement. Objection sustained.

Mr. GRIFFIN.—Q. Will you state the nature of the sign that you complain of in this case that you claim was erected by the defendants, Morgan and Long, and where that sign was erected?

Mr. TOWNSEND.—If your Honor please, if he has the sign itself, that is the best evidence.

The COURT.—Is the sign here?

Mr. GRIFFIN.—The sign is not here, your Honor, but I have photographs of it.

The COURT.—Submit the photographs.

Mr. GRIFFIN.—I wish to have the record clear as to the verbal description of the sign, so that if the matter comes before other courts, there may be a verbal description of the sign in the record.

Mr. LOFTUS.—There is no foundation laid for this [33] question. We don't know whether he has any information concerning the sign.

Mr. GRIFFIN.—Q. Do you know anything about

(Deposition of Joseph Hotchner.)

the sign which is complained of in respect to the defendant Morgan & Long? A. I do.

The COURT.—It seems to me that a very good photograph, or a model, would be the very best evidence as to the form of the structure. If he can describe it better than the photograph shows it, he can proceed, but I doubt that very much. Let me see the photograph you have.

Mr. GRIFFIN.—Yes, your Honor.

The COURT.—Submit it to council on the other side.

Mr. TOWNSEND.—Of course, we do not admit, your Honor, that this discloses a structure which is apparent from the photograph itself.

The COURT.—It is correct as far as it goes, isn't it?

Mr. TOWNSEND.—As far as we know.

Mr. GRIFFIN.—I will offer these two photographs in evidence after they have been identified.

The COURT.—It seems to me the only way to try a patent case of any importance is to have models of the different types, so that the Court can see what the difference is.

Mr. GRIFFIN.—We can't very well take the other man's sign down. It is over on Fillmore street. The best we can do is to provide a photograph and give a verbal description.

The COURT.—Proceed.

Mr. GRIFFIN.—Q. I show you two photographs, and ask you if you can identify them? A. Yes.

Q. What are they? A. This is the sign that is—

(Deposition of Joseph Hotchner.)

Mr. TOWNSEND.—We object because there is no proper foundation laid. This man did not take the photograph, so far as we know.

The COURT.—He can tell whether it is a correct representation, or not. [34]

A. (Continuing.) I have seen the sign.

Mr. GRIFFIN.—Q. Is this photograph a correct representation of the sign as made there?

A. It is.

Q. Do you know who erected the sign?

A. Morgan & Long.

Mr. TOWNSEND.—Now, your Honor, he must be speaking from hearsay.

The COURT.—Does that relate to a matter over which there is any controversy? Do you deny this sign?

Mr. TOWNSEND.—We don't know anything about this particular sign.

Mr. GRIFFIN.—I will offer these in evidence and ask to have them marked.

Mr. TOWNSEND.—We object to them because no proper foundation has been laid.

The COURT.—I will admit them.

(The photographs were here marked, respectively, Plaintiff's Exhibits 3 and 4.)

Mr. GRIFFIN.—Have you examined this sign carefully? A. I have.

Q. Have you examined the letters? A. I have.

Q. Will you state to the Court how these letters are made?

A. The letters are soldered on a raised outline all

(Deposition of Joseph Hotchner.)

around the elements of the letter.

Q. What forms the letter?

A. The raised outline forms the letter.

Q. And through the body of the sign, how does the light escape?

Mr. TOWNSEND.—If your Honor please, the sign, itself, would be the best evidence. He is getting at the internal construction. The photograph can only speak of the external appearance.

The COURT.—He is asking him what he discovered upon an examination of it. The sign may be better than oral testimony, but is is not the only evidence. Objection overruled. [35]

Mr. GRIFFIN.—Q. Will you state how the interior of the sign is constructed?

A. There are lamps placed within the interior on elements, any kind of means, on a strip; sockets are put in, wired up, lamps are placed in the sockets, and the light escapes through the glass.

The COURT.—This is on the question of infringement of the raised letter?

Mr. GRIFFIN.—Yes, sir.

The COURT.—It seems to me counsel can agree in a few minutes as to just what the defendant has done.

Mr. LOFTUS.—We are not ready to try this case, your Honor. I don't even know where these defendants are now. They are no longer in business. That is why I wanted this case to abide the decision of the other.

The WITNESS.—They are in business.

(Deposition of Joseph Hotchner.)

Mr. GRIFFIN.—Q. Do you know whether these defendants are now in business?

A. They are.

Q. Where?

A. On Eddy Street, between Pierce and the next street, whatever the name of it is; between Pierce and Scott Street.

Q. In this city and county?

A. In this city and county, on Eddy street.

Q. Now, with respect to the other one, I will show you two photographs and ask you if you can identify them. A. Yes, sir.

Mr. GRIFFIN.—I will ask to have these photographs admitted as Plaintiff's Exhibits 5 and 6.

(The documents were here marked Plaintiff's Exhibit 5 and Plaintiff's Exhibit 6.)

Q. Have you seen the signs purported to be shown in these photographs? A. Yes.

Q. Where are they?

A. They were over at Eleventh and Broadway, in Oakland. [36]

Q. Are these photographs correct representations of those signs? A. Yes, sir.

Q. Will you state how each one of these signs is constructed; did you examine both of these signs?

A. I did.

Q. Carefully?

A. I went up on a ladder to look at it.

Q. Look at the sign, "Normal Pharmacy," will you state how that is constructed?

(Deposition of Joseph Hotchner.)

A. It has a raised molding soldered all around the elements of the letter.

Q. How is it illuminated?

A. Illuminated by means of lights within the interior of the box.

Q. How does the light escape?

A. The light escapes through the glass within the center of the elements of the letter.

Q. Has this sign other lamps?

A. It has lamps underneath it, in what we call the illuminator, to light up the sidewalk or front of the building.

Q. Referring now to the photograph, Plaintiff's Exhibit 5, will you describe the lamp shown in the lower portion?

A. This is the lamp in the lower portion of the sign, wherein the lights are embedded in that reflector, and is built exactly like ours.

Mr. TOWNSEND.—Mr. Griffin, I understand that in regard to Exhibit 5, referring to the "Harry Rose, Haberdasher," you make no charge of infringement concerning the sign, the front portion, which has the words, "Harry Rose, Haberdasher"?

Mr. GRIFFIN.—No, except inasmuch as the lamps used for illuminating the sidewalk are in the position described in claims 1, 2 and 3 of the 1919 patent, and that the use of these particular letters in conjunction with that means for illuminating the sidewalk is an infringement.

Mr. TOWNSEND.—In other words, I understand from you that your charge of infringement

(Deposition of Joseph Hotchner.)

relates only to the lower row of lamps in the bottom of the sign, inclosed in this trough, and that you make [37] no claim of infringement as to this illuminated sign, "Harry Rose, Haberdasher."

Mr. GRIFFIN.—That is not correct.

Mr. TOWNSEND.—You have no charge of infringement in relation to this front portion of the sign.

Mr. GRIFFIN.—Yes, there is a charge of infringement in respect to that, and I will explain it to you.

Mr. TOWNSEND.—Which patent does that infringe, the words, "Harry Rose, Haberdasher"? We want it perfectly clear.

Mr. GRIFFIN.—The charge of infringement is made in respect to the sign shown in Plaintiff's Exhibit No. 5, that the lamps illuminating the sidewalk in conjunction with the letters of this sign are an infringement of claims 1, 2 and 3 of the 1919 patent, although no charge of infringement is made as to those letters separately.

Mr. TOWNSEND.—In other words, there is no infringement in that sign of the first Hotchner patent.

Mr. GRIFFIN.—No.

The WITNESS.—Yes, there is.

Mr. GRIFFIN.—Just a moment.

Q. What is the situation as to the two signs shown here with respect to each other, and what is the relation of this series of sidewalk illuminating lamps with respect to these two signs.

(Deposition of Joseph Hotchner.)

A. I don't understand your question.

Q. I am referring to exhibits 5 and 6.

A. The one sign is the patented sign which is known here at the present time as the first patent, and within that sign is embedded that illuminator to light up the front and the sidewalk, which is described in my second patent here—

The COURT.—Do I understand the illuminating device used by the defendant, or the defendants here, is entirely below the frame?

Mr. GRIFFIN.—No, your Honor.

Mr. LOFTUS.—It is within the very bottom, but below the letters on the sign. [38]

Mr. GRIFFIN.—It is similar to Figure 2 of the first patent.

Q. At the place where these signs are installed, how many signs are there having this illuminating effect from the lower portion of the body of the sign?

A. 6, 7 or 8. I have a picture there showing them all on the street.

Q. I will show you another photograph and ask you if you can identify it? A. Yes.

Mr. GRIFFIN.—I offer this photograph in evidence and ask that it be marked Plaintiff's Exhibit 7.

Mr. TOWNSEND.—What is the purpose of this particular photograph?

Mr. GRIFFIN.—The purpose is to show that all of these signs are an infringement of the second patent.

(Deposition of Joseph Hotchner.)

Mr. TOWNSEND.—You only claim that the second patent is infringed by signs in that photograph?

Mr. GRIFFIN.—Yes, all of them.

Mr. TOWNSEND.—I say, do you only claim that the second patent is infringed?

Mr. GRIFFIN.—Yes, the second patent.

(The photograph was marked Plaintiff's Exhibit 7.)

Q. What is this photograph?

A. This photograph shows the various signs put up on that building for the different concerns. The first photograph, to the left, is the "Normal Pharmacy," which was made, as I described here before, with the letters raised up, soldered on with a molding around the elements of the letter, the bottom has the illuminator lighting up the front and the sidewalk. The other photographs have the illuminators each lighting up the front of the sidewalk.

Q. Is that photograph a correct representation of the signs in Oakland you have spoken of?

A. Yes, sir.

Q. And did you say that all of those signs had the lights in [39] the lower portion for the illumination of the sidewalk? A. Yes, sir.

Q. Is there any light from the interior signs that goes through the letters after being reflected from the reflectors for the sidewalk lamps?

Mr. TOWNSEND.—That is objected to as leading. We want to know what his construction is. We want to see what the bases for his opinion are. That question is grossly leading.

(Deposition of Joseph Hotchner.)

Mr. GRIFFIN.—I will withdraw it.

Q. Will you state the interior construction of the signs with respect to the illumination of the letters and the illumination of the sidewalk?

A. There are sockets placed within the interior of these boxes, they are wired up, lamps are put in, and the light escapes through the center portion of the letter, within the elements of the letter. There is a reflector within it which is built up by this sidewalk light; the light is thrown down between the two sides of the reflector, and goes right through the elements of the letter.

Mr. TOWNSEND.—We object to the last portion of the answer as calling for an opinion. He should introduce structures on which he bases his opinion. We ought to know what these statements are based on.

Mr. GRIFFIN.—Q. Did you examine the letters that were in those signs? A. I did.

Q. How did you do so?

A. I went up on a ladder.

Q. Did you look inside the signs?

A. You can't look inside of the sign.

Mr. TOWNSEND.—I move that the testimony in regard to the interior be stricken out.

The COURT.—The opinion will not hurt anybody in view of his statement. [40]

Mr. GRIFFIN.—Q. Is it possible for you to tell anything from the exterior of the sign as to the interior construction? A. Certainly.

(Deposition of Joseph Hotchner.)

Mr. LOFTUS.—I object to that as calling for a conclusion.

The COURT.—You may ask him for his reason, if you like. Proceed.

Mr. GRIFFIN.—Q. How are these signs made in respect to the kind of metal, and so on?

A. They are made out of galvanized iron, the same as all signs are made.

Cross-examination.

Mr. LOFTUS.—Q. Did you take any measurements of those signs that are shown in this photograph, exhibit 7? A. What measurements?

Q. The interior dimensions of the signs.

A. No, I didn't take any measurements of the interior.

Q. Do you know who erected those signs?

A. I do.

Q. Who erected them?

A. The Federal Sign Company.

Q. Is that the full name of the company?

A. You never can tell just who is erecting them; there are several companies in the Federal, some are called Federal Electric Company, some are called Federal Sign System. They just put on "Federal."

Q. You don't know which company erected this particular sign?

A. No, I don't know which company, whether it is the Federal Sign System, or the Federal Electric Company.

(Deposition of Joseph Hotchner.)

Q. What is the Federal Electric Company, a corporation? A. I so understand.

Q. What is the Federal Sign System?

A. A corporation.

Q. You stated that you made no measurements of the interior of these signs. Did you make any measurements of the exterior? A. No.

Q. You *don't* the height of the letters?

A. No, I do not. [41]

Q. You don't know the depth of the trough, the bottom reflector, do you?

A. Yes, it is about 6 inches deep.

Q. Did you measure it?

A. No, I didn't. I don't have to measure a little 'hing like that, you can tell by your eye.

Q. You guess at it? A. Yes.

Q. And you didn't examine the interior of the sign?

A. The exterior building of the sign—

Q. Just a moment; I say, you didn't examine the interior of the sign? A. No, sir.

Q. Did you measure the distance between the bottom of the letters at each side of the sign, the bottom line of letters reading, "Normal Pharmacy," did you measure the distance between that bottom line and the lowermost reflector which illuminates the sidewalk? A. No, I did not.

Deposition of Joseph A. Meeks, for Plaintiff.

Plaintiff thereupon called JOSEPH A. MEEKS, who testified as follows:

I am 55 years old. My residence is 499 Evergreen Avenue, Daly City, I am a sign manufacturer; have been so engaged 23 years. I have examined the signs, exhibits 3 and 4 purport to represent. The sign is located on Ellis Street, corner Fillmore. The photographs are correct representations of the sign. The sign is constructed of a raised metal portion soldered around the element of the letter, with a white glass set in back. The lamps are so constructed to shine through the glass and illuminate the letter. I recognize the sign shown in Plaintiff's Exhibits 5, 6 and 7. I have seen them. The "Normal Pharmacy" is located at 11th & Broadway, Oakland. The other signs are located on Broadway, adjoining the drug sign. I examined the sign from the outside. The sign is formed on the outside by means of metal, soldered around, with glass in back of it. [42]

Mr. GRIFFIN.—Q. How is it illuminated?

A. Illuminated from the inside.

Q. With respect to the lower portion of the sign, how about that?

A. The lower portion of the sign has a reflector to throw the light down in front of the building and on the sidewalk.

Q. Do you know who erected those signs?

A. Manufactured by the Federal; their imprint is on them.

(Deposition of Joseph A. Meeks.)

Q. The Federal what? A. The Federal Sign Company or the Federal Electric Company, I don't know which, but I know it is the Federal.

Q. Do you know who erected the sign shown in Plaintiff's Exhibit 3?

A. The Morgan Sign Company.

Q. Who does that consist of?

A. Mr. Long is one of the partners.

Q. He is one of the defendants herein?

A. Yes, sir.

Cross-examination.

Mr. LOFTUS.—Q. You are connected with the Novelty Sign Company? A. Yes, sir.

Q. Is Mr. Hotchner connected with that company? A. Yes, sir.

Q. What is his position in the company?

A. He is the president and general manager.

Q. What is your position?

A. I am superintendent and foreman of the shop.

Q. He is your employer? A. Yes, sir.

Q. In regard to your information as to who erected the signs shown in exhibits 3 and 4, in what way did you get that information?

A. In regard to the erection?

Q. Yes, how did you learn who erected the sign shown in these exhibits?

A. By the imprint on the sign.

Q. That is the only information you have?

A. Yes, sir.

(Deposition of Joseph A. Meeks.)

Q. And, similarly, in regard to exhibits 5, 6, and 7 shown here, where did you receive your information as to who erected those signs? [43]

A. I don't think I testified as to who actually erected them.

Q. You mentioned the name "Federal," didn't you? A. Yes, sir.

Q. Where did you receive that information?

A. The imprint on the sign.

The COURT.—Q. Your information in all cases was derived from the imprint on the sign?

A. Yes; of course, we don't see the man putting it up.

Mr. LOFTUS.—Q. And you didn't make any other inquiries? A. No.

Mr. TOWNSEND.—We move that this witness' testimony in regard to the origin of exhibits 4 and 5, the signs represented by those photographs, be stricken out as based on hearsay.

The COURT.—The testimony will stand for what it is worth; I don't know that it is worth anything.

Mr. LOFTUS.—That is all.

**Deposition of Joseph Hotchner, for Plaintiff
(Recalled).**

JOSEPH HOTCHNER, recalled for plaintiff.

Mr. GRIFFIN.—Q. Did you make any inquiry of any of the store managers over there as to who erected the sign?

(Deposition of Joseph Hotchner.)

Mr. TOWNSEND.—That is immaterial, and calling for hearsay testimony.

The COURT.—He may answer it “Yes” or “No.”

A. Yes.

Mr. GRIFFIN.—Q. What happened as a result of that inquiry?

A. The man showed me the bill—

Mr. TOWNSEND.—I object to that as hearsay.

A. When I was here on the stand before, just a few minutes ago, your Honor, I didn't remember this incident, but when I went back to my seat I remembered that I went inside, and I spoke to the [44] owner, and he took me over to his other store at Eighth and Washington, and he showed me the bill. I knew exactly how much he paid for it, and I saw the billhead of the Federal Electric Company. I forgot that when I was on the witness-stand before.

Mr. GRIFFIN.—Q. Was that bill receipted?

A. I cannot say as to that.

Mr. GRIFFIN.—That is all.

Cross-examination.

Mr. LOFTUS.—Q. In regard to exhibits 4 and 5, where did you get your information as to who erected those signs?

A. From our man. He saw them putting them up. They were doing some work nearby, and our men drove by and they saw these people putting the sign up.

(Deposition of Joseph Hotchner.)

Mr. LOFTUS.—We move that the testimony in regard to the origin of the sign shown in exhibits 4 and 5 be stricken out as hearsay.

The COURT.—I will sustain the motion except as to what he saw there.

Mr. TOWNSEND.—This information that comes to him is hearsay.

Mr. GRIFFIN.—We have other information on the subject.

Q. Did you obtain any information from the records of the City and County of San Francisco as to who erected these signs?

A. I went to the Board of Works—

Mr. TOWNSEND.—We object to that.

The COURT.—One moment. If there is any evidence there, introduce it. You cannot give hearsay evidence by this witness. The objection is sustained. I understood there was an admission given upon the part of the defendants that they did construct a particular kind of a device, and the only question is whether that is an infringement. [45]

Mr. TOWNSEND.—We ought to have something before us to see what the structure is.

The COURT.—Are you through with this witness?

Mr. GRIFFIN.—I am through with the witness.

Mr. GRIFFIN.—That is our case.

Mr. TOWNSEND.—I think, in view of the character of the evidence introduced in the *prima facie*

(Deposition of Joseph Hotchner.)

case, that we are in a position to make a somewhat unusual motion at this time, in a case of this kind, and that is that the bill be dismissed.

The COURT.—It is a very unusual motion in an equity case. If you want to submit the case on the record, well and good; if not, go ahead.

Mr. TOWNSEND.—It would be equivalent to a nonsuit.

The COURT.—The Court cannot grant a nonsuit in a case of this kind.

Mr. TOWNSEND.—I believe that is so, your Honor.

Mr. GRIFFIN.—I would like to recall Mr. Hotchner for the purpose of identifying the building permit under which the electric sign was erected. The application was made by the American Electric Sign Company, the defendant herein.

Mr. TOWNSEND.—Infringement is based on making, selling, using. Those are the three elements, your Honor, that we are all so familiar with. We submit—

The COURT.—Just a moment. The corporation to which you referred is not a party defendant?

Mr. GRIFFIN.—Morgan & Long were doing business as the American Electric Sign Company.

Mr. TOWNSEND.—There is nothing in the complaint to that effect, so far as I recall. [46]

Mr. GRIFFIN.—Yes, the original bill of complaint alleges that.

(Deposition of Joseph Hotchner.)

The COURT.—I understand that the same issue is involved as to the other defendant, in any event?

Mr. TOWNSEND.—Yes, practically; the structure might be slightly different from the defendant's.

The COURT.—The application can be admitted. The application speaks for itself. I don't suppose this witness knows anything about it, does he?

Mr. GRIFFIN.—Yes.

The COURT.—Very well, proceed with your examination.

**Deposition of Joseph Hotchner, for Plaintiff
(Recalled).**

JOSEPH HOTCHNER, recalled for plaintiff.

Mr. GRIFFIN.—Q. Did you examine the records of the City and County of San Francisco with respect to the erection of signs, and particularly with respect to the erection of the sign reading, "Lunch," shown in Plaintiff's Exhibit 3?

A. I did.

Q. Who did you find made the application?

A. The application speaks for itself.

Q. Did you see the original application?

A. I did.

Mr. LOFTUS.—We object to this, your Honor.

The COURT.—That is hearsay. Have you the permit?

Mr. GRIFFIN.—This is a copy of the permit; it is not a certified copy.

Mr. TOWNSEND.—It is not even evidence. We object to it.

The COURT.—Objection sustained.

Mr. GRIFFIN.—At the next hearing I will ask to supply a certified copy of the permit under which the “Lunch” sign was erected. [47]

The COURT.—You can supply it at any time during the trial. Proceed with the defense.

Mr. TOWNSEND.—For your convenience, your Honor, we have segregated the claims of the patent, which claims are alleged to be infringed, into their elements, so that you may more readily appreciate the structure described.

With reference to the numerals of elements 1, 2, 3 and 4, they represent the elements of each claim. The characters A and B are the letters indicating the functions pertaining to each element.

The COURT.—In the first case, I understand that the raised molding is the only claimed infringement.

Mr. LOFTUS.—That is our understanding of it.

Mr. TOWNSEND.—The patent, itself, defines a very peculiar mode of construction of this molding. By reference to the patent drawing, of which we have enlargements here, it seems that the metal front or metal box had been bent, so as to provide a broader portion, which is marked “12.” First it is bent outward horizontally, and then inwardly.

This forms a pocket in which the glass, which is marked "13," rests. By the peculiar cutting and bending in the plaintiff's patent of the bevels or moldings, he forms a pocket which supports the glass in there, and so the glass lies in the plane of the metal front, and this metal molding comes down over the glass. He has a slight modification in Figures 4 and 3, where he puts a double kink into the metal, and yet receives the glass, so that at all times the glass lies in the plane of the metal front. I make this explanation because there has been an utter failure to explain the patented structure in the *prima facie* case of plaintiff. The claims are limited to the structures shown there. This glass at all times lies in the plane of the metal [48] front. Looking at a sign in front gives no internal indication of its organization. Mr. Loftus already has referred to the second patent and explained it to your Honor.

Mr. LOFTUS.—We would like to offer in evidence the certified copy of the file-wrapper and contents of patent No. 1,259,237, Joseph Hotchner, granted March 12, 1918, being the first patent in suit. We ask that it be marked Defendant's Exhibit "A."

We also offer in evidence certified copy of the file-wrapper and contents of patent No. 1,315,187, to Joseph Hotchner, granted September 2, 1919, being the second patent in suit, and ask that it be marked exhibit "B."

In connection with each of these file-wrappers, we

would like to offer the patents that were referred to by the examiner during the prosecution of the application, so that the Court may be fully advised as to the record in the Patent Office. Those patents are as follows:

Murray patent, 935,803, October 5, 1919. We ask that that be marked Defendant's Exhibit "C."

Bock patent, 1,085,530, dated January 27, 1914. We ask that that be marked Defendant's Exhibit "D."

Muller-Thyn Patent, No. 716,078, December 16, 1902. We ask that that be marked Defendant's Exhibit "E."

British Patent to Amy, 10,990, May 25, 1901. We ask that that be marked Defendant's Exhibit "F."

French Patent to Very, 334,837, August 25, 1903. We ask that that be marked Defendant's Exhibit "G."

Photostat of drawing of French patent to Genies. No. 408,992. We ask that that be marked Defendant's Exhibit "H."

Those are the references cited by the Patent Examiner in connection with the first patent to Hotchner. There is one other, which is a certified copy of a French patent to Boldes, with a translation [49] attached, the translation being made by the Patent Office, No. 335,943, dated September 17, 1903. We ask that that be marked Defendant's Exhibit "I."

Now, in connection with the second patent in suit, we offer the following in evidence.

United States patent No. 1,128,741, to Wortley, February 16, 1915. We ask that that be marked Defendant's Exhibit "J." The Wortley patent is one of the citations referred to in the file-wrapper.

Mr. TOWNSEND.—It is filed May 12, 1913. The stipulation on file states that not only plain copies may be introduced, but the dates of filing are accepted as true dates, unless otherwise shown.

Mr. GRIFFIN.—Very well. However, I would like to object to this particular patent, on the ground that it is a patent subsequent to the filing date. I don't remember the circumstances just now concerning the citation of this patent, but this patent was put into the record subsequent to the filing of the patent application.

Mr. TOWNSEND.—But was never overcome by any antedating affidavit, and, therefore, the plaintiff is estopped at this time from stating that it is not pertinent.

The COURT.—If it is one of the references, I will admit it.

Mr. LOFTUS.—The next is Thorne, No. 854,779, May 28, 1907. We ask to have that marked Defendant's Exhibit "K."

The next is Clark, No. 923,769, June 1, 1909. We ask to have that marked Defendant's Exhibit "L."

The next is Wortley No. 983,593, February 7, 1911. We ask to have that marked Defendant's Exhibit "M."

The next is Harris, No. 1,238,763, September 4, 1917. We ask to have that marked Defendant's Exhibit "N." [50]

The next is Wiley & Hough, No. 1,081,800, December 16, 1913. We ask to have that marked Defendant's Exhibit "O." The patents which have just been offered represent the citations that were referred to by the Patent Office in connection with the two Hotchner patents in suit.

We wish now to offer some additional patents which were not referred to by the Patent Examiner:

U. S. Patent to Little, No. 32,195, dated August 30, 1861. We ask to have that marked Defendant's Exhibit "P."

Hotchner No. 769,139, August 30, 1904. We ask to have that marked Defendant's Exhibit "Q."

The last two patents offered are particularly directed to the ornamental molding features.

Clark, No. 775,295, November 22, 1904. We ask to have that marked Defendant's Exhibit "R."

Mr. GRIFFIN.—Is the Clark patent pleaded in the answer?

Mr. LOFTUS.—I presume it is. If not, it can go in to show the state of the prior art.

The COURT.—Yes, the Clark patent is referred to.

Mr. LOFTUS.—The next is Fortman, No. 1,070,028, August 12, 1913. We ask to have that marked Defendant's Exhibit "S."

Mr. GRIFFIN.—Is that in the answer?

The COURT.—Apparently not.

The TOWNSEND.—It is offered to show the prior art, your Honor.

Mr. LOFTUS.—The two patents last offered have to deal with the downward illumination feature, bearing on the second Hotchner patent in suit.

Mr. GRIFFIN.—I object to these two patents upon the ground that no notice has ever been given of them.

Mr. TOWNSEND.—They are competent to show the prior art. [51]

The COURT.—That is my understanding of the matter.

Mr. LOFTUS.—We have some depositions here, your Honor, which have been taken under the equity rules, pursuant to notice.

The COURT.—I presume it is not necessary to take up the time of the Court reading these. They could be considered read. I will read them myself.

Mr. LOFTUS.—The first consists of two depositions taken in Los Angeles, the deposition of Paul D. Howse and J. E. Tucker.

The COURT.—Is the purpose of these depositions to show prior use?

Mr. LOFTUS.—Yes, your Honor, and in connection with a sign known as the White Sewing Machine Agency sign. In connection with the Los Angeles depositions, we offer these photographs of a sign erected in Los Angeles, which you will notice has the decorative outline molding constructed, however, of wood, but giving the same general ap-

pearance as any of these signs that are in dispute here.

The COURT.—When was this constructed, and how long has it been in use?

Mr. LOFTUS.—I think I can give that to your Honor.

Mr. GRIFFIN.—He says it was just previous to May 1st, 1914. That is corroborated by another witness.

Mr. LOFTUS.—Now we offer the depositions of John Anderson, C. E. Heft, and J. C. Zanker, taken at Portland, Oregon, on Friday, February 4, 1921, and the exhibits which accompany them. The same may be considered as having been read in evidence. Counsel for plaintiff was present at the taking of those depositions. Here is a photograph showing, in a general way, the construction of the Oregon Hotel sign, which was proven by this witness as having been erected as early as October 10, 1911. That is considerably [52] before any application date of Hotchner.

The COURT.—I would be a good witness to that myself, I have seen it many times.

Mr. LOFTUS.—The depositions may be considered as having been read and the exhibits as having been offered.

We next offer in evidence depositions of Archibald MacKenzie and C. E. Sprague, taken in San Francisco, on the 9th day of February, 1921. In connection with those depositions, the exhibits were kept in custody of counsel pursuant to stipulation,

and I will offer the exhibits at this time. The exhibits were marked "M-A," "M-2," "M-3," "M-4," "M-5," "M-6," "M-7," "M-8," "M-9," "M-10," "M-11," "M-12," "M-13," "M-14," "M-15," "M-16," "M-17," "M-18." The San Francisco depositions which have just been offered, had to do with what is known as the prismatic sign; this model was introduced at that time. This model is not claimed to be an early one, but was merely offered to illustrate the construction of the prismatic sign. Subsequently we adjourned to Denver, Colorado, where we took additional testimony, and cut one of the letters out of a sign that had been in use there in Denver since 1912. This is the letter which we cut from the sign in Denver. It is part of the original sign. It was installed in 1912, and was still in use in Denver as recently as six or nine months ago.

Now we offer the Denver depositions, additional depositions; Archibald Mackenzie, Thomas N. Norton, Clark Rider, Otis V. Spencer, together with the exhibits identified therein; those exhibits have been kept in the custody of counsel, pursuant to stipulation. They are offered herewith. They are Exhibits "A-1," "A-2," "A-3," "A-4," "A-5," "A-6," which is the specimen of a sign, and "A-7," "A-8," and "A-9."

I will state briefly the substance of the Denver depositions bearing on this prismatic sign, so-called, which may be referred [53] to later on in the testimony we have to offer here. At this

Denver session we called a witness by the name of Spencer, who is the permit and certificate clerk in the Department of Improvements of Parks in the city of Denver, and has been employed there for twelve years. He produced his official records, showing applications for permits to erect electric signs, and he also produced certificates of electrical inspection pertaining thereto. The following permits were read into the record: Permit No. 2894, dated August 17, 1912. Your Honor will see that that is more than two years prior to the filing date of the Hotchner patent. This permit refers to a sign erected by the Prismatic Sign Company, and while that sign is no longer in existence, the witnesses have all testified that it is identical with the sign we have here as Exhibit "A-6." The permit covering the sign, Exhibit "A-6," the application for the permit is dated July 31, 1912. The sign was to be erected by the Prismatic Sign Company for the Denver Electrical Company, the reading matter on the sign was, "Denver Electrical Company," and this letter is the last letter in the sign, being, "O" in the abbreviation "CO." That permit was issued after an inspection of the sign, after an inspection of the electric wiring. The final date of approval and inspection is August 14, 1912, which was two years and a week or so before Hotchner applied for his patent. This is the sign which the Prismatic Sign Company erected under the authority of that permit. The manufacturers of this sign are Archibald Mackenzie and a man by

(Deposition of Otis B. Spencer.)

the name of Norton, both of them testified in this case and identified the sign. The user of the sign is Clark Rider, whose deposition has been offered. He testified that the sign is still in the same condition as when originally erected. Counsel for the plaintiff stood on the sidewalk and watched while this letter was cut from the sign.

The COURT.—We will take a recess now until two o'clock.

(A recess was here taken until two o'clock P. M.)
[54]

Deposition of Otis B. Spencer, for Defendant.

Thereupon defendant called as a witness OTIS B. SPENCER, who testified as follows:

My name is Otis B. Spencer; living at the Y. M. C. A., City and County of Denver, Colorado; occupation, permit and certificate clerk in the Department of Improvements and Parks, City and County of Denver. Have been in that position five or six years. The department was formerly known as the Board of Public Works. I was with the Board of Public Works for six or seven years previously. The Board of Public Works issues permits for the hanging of electric signs in the city of Denver. I had supervision of these permits and keep the records. I have some of them with me relating to 1912, for electric sign permits. I have a record showing Permit No. 2935, that I issued in the name of my Department on August 19, 1912,—a permit to the Prismatic Sign Company to erect an

(Deposition of Otis B. Spencer.)

electric sign over the premises occupied by the New York Floral Company, at No. 526 Sixteenth Street, in accordance with the rules and regulations of the board or department.

Q. Prior to the issuance of that permit, on August 19, 1912, what procedure was gone through by the applicant and others so far as you know? In other words, what is the procedure leading up to the granting of one of these permits? A. The applicant submits his application, and states the size and character of the sign, and usually submits a sketch also. It is necessary, before the final issuance of permit, to produce from the Electrical Inspection Department of the city a certificate stating by the city electrician that the wiring has been inspected by his department and is satisfactory.

Q. Does such an inspection slip appear in connection with the permit you have just referred to?

A. Yes.

Q. What is shown by this inspection slip? [55]

Mr. O'BRIEN.—The question is objected to as the slip itself is the best evidence and really should be put in, either a photostat copy or the original, whichever counsel chooses. I do not object to a photostat copy in place of the original if it is impractical for the witness to produce the original, or part with it I should say.

A. The inspection slip shows that the city electrician did inspect the wiring in connection with this sign on August 17, 1912, and O. K.'d the same.

Q. Have you prepared at my request a true copy

(Deposition of Otis B. Spencer.)

of the application for permit which you have just referred to, and likewise a true copy of the inspection slip which you have just referred to?

A. Yes.

Q. Will you please produce that? A. I have it.

Q. Have you prepared this copy with the original to ascertain whether or not it is a true copy?

A. Yes.

Q. And do you state under oath that it is a true copy? A. I do.

Mr. LOFTUS.—The copy of application for permit and attached inspection certificate which is produced by the witness are offered in evidence as Defendants' Exhibit "A-1."

Mr. O'BRIEN.—Objected to as not the best evidence and as impertinent, irrelevant and immaterial.

Said Defendants' Exhibit "A-1" is in words and figures as follows, to wit:

Defendants' Exhibit "A-1."

ELECTRICAL INSPECTION DEPARTMENT
City and County of Denver.

Permit No. 2894.

To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at
526-16th Street, owned by NEW YORK FLORAL

CO., has been inspected and approved by this department. [56]

Inspected, Date, 8-17-12.

Inspector—Oliver.

(Signed) JNO. MALM,
City Electrician.
S.

APPLICATION FOR PERMIT TO ERECT SIGN.

~~July 29, 1912.~~

No. 2935.

Denver, Colorado.

To the Board of Public Works, City and County
of Denver:

Please issue to Prismatic Sign Co. subject to the authority conferred by the Rules and Regulations of the Board of Public Works a permit to erect electric sign 12 ft. long by 3 ft. wide, and 7 inches deep from the premises occupied by New York Floral Co.

Said sign to be erected in front of premises located at 526-16th Street and not to project more than 2 feet from lot line at outermost point of sign, as more fully appears by sketch on back of this paper.

Sign to be put up on top of cornice and project 2 feet from lot line.

The privilege is asked for within 7 days from date and we estimate it will probably be — months before any other sign in the same place will be required for the purpose of inspection. The work to be done subject to your rules and direction, and the general laws and ordinances of the

(Deposition of Otis B. Spencer.)

city, and at our risk for any and all loss or damage occasioned to the City, either directly or indirectly, and the amount of any judgment thereby obtained against said city shall be conclusive evidence of our liability.

PRISMATIC SIGN CO.

By A. MACKENZIE.

O. K.—SETH BRADLEY,

President.

(Endorsed on side:)

Received of the Prismatic Sign Co. 50¢ to cover cost of permit. Aug. 19, 1912. [57]

ALLISON STOCKER,

Treasurer.

By B., Deputy.

Q. Referring again to your books of records, will you please state whether or not you have any records showing an application by the Prismatic Sign Company to erect a sign on the premises occupied by a Mrs. DuBois in Denver, Colorado.

Mr. O'BRIEN.—Objected to as leading.

A. Yes.

Q. What is the number of that application?

A. 2951.

Q. When was that permit finally granted?

A. September 3, 1912.

Q. And is there any certificate of inspection from the Electrical Department in connection with this permit or application for permit? A. Yes.

Q. What is the date shown by the inspection certificate?

(Deposition of Otis B. Spencer.)

A. It shows that the city electrician on September 3, 1912, inspected and certified the wiring in connection with the sign as O. K.

Q. Have you prepared at my request a true and complete copy of the application for permit, No. 2951, which you have just referred to, and likewise of the certificate of inspection from the Electrical Department? A. Yes.

Q. Please produce that. A. I have it.

Mr. LOFTUS.—Copy of application for permit No. 2951, with attached certificate of electrical inspection, produced by the witness, are offered in evidence as Defendants' Exhibit "A-2."

Mr. O'BRIEN.—Objected to as not the best evidence, and also incompetent, irrelevant and immaterial.

Said Defendants' Exhibit "A-2" is in words and figures as follows, to wit: [58]

Defendants' Exhibit "A-2."

ELECTRICAL INSPECTION DEPARTMENT
City and County of Denver.

Permit No. 3259.

To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at 757 Broadway, owned by MRS. DU. BOIS, has been inspected and approved by this department.

Inspected, Date—9-3-12.

Inspector—Oliver.

(Signed) JNO. MALM,
City Electrician.
S.

APPLICATION FOR A PERMIT TO ERECT
SIGN.

~~Aug. 27, 1912.~~

No. 2951.

To the Board of Public Works, City and County
of Denver:

Please issue to Prismatic Sign Co. subject to the authority conferred by the Rules and Regulations of the Board of Public Works a permit to erect electric sign 17 ft. long by 3½ ft. wide, and 7 in. deep from the premises occupied by Mrs. DuBois.

Said sign to be erected in front of the premises located at 757 Broadway street, and not to project more than 5 ft. from lot line at outermost point of sign, as more fully appears by sketch on back of this paper.

No. of lights—15.

The privilege is asked for 7 days from date, and we estimate it will probably be several months before any other sign in the same place will be required for the purpose of inspection. [59] This to be done subject to your rules and directions, and the general laws and ordinances of the city, and at our risk for any and all loss or damage occasioned to the city, whether directly or indirectly, and the amount of any judgment thereby obtained

(Deposition of Otis B. Spencer.)

against said city shall be conclusive evidence of our liability.

PRISMATIC SIGN CO.

By A. MACKENZIE.

O. K.—SETH BRADLEY,

President Board of Public Works.

(Endorsed on side:)

Received of Prismatic Sign Co. 50¢ to cover cost of permit. Sept. 3, 1912.

ALLISON STOCKER,

Treasurer.

By P., Deputy.

Q. Will you please refer to your book of permits, and state whether or not you have any record of application for a permit and issuance thereof to the Prismatic Sign Company of Denver, Colorado, for the erection of a sign on the premises occupied by Denver Electrical Company, 137 Fifteenth Street, Denver, Colorado. A. Yes.

Q. What is the number of that application?

A. No. 2984.

Q. When was that application finally issued?

A. October 15, 1912.

Q. Is there attached to this an inspection certificate from the Electrical Inspection Department?

A. Yes.

Q. What date is shown thereby?

A. The date shown on the electrical certificate is October 14, 1912.

Q. Have you at my request prepared a true and full copy of this application for permit No. 2984,

(Deposition of Otis B. Spencer.)

and of the certificate of inspection by the Electrical Inspection Department attached thereto?

A. Yes.

Q. Please produce that?

A. I have it here. [60]

Mr. LOFTUS.—Copy of application for permit No. 2984 and attached certificate of inspection from the Electrical Inspection Department, produced by the witness, are offered in evidence as Defendants' Exhibit "A-3."

Mr. O'BRIEN.—Objected to as not the best evidence and incompetent, irrevelant and immaterial.

Said Defendants' Exhibit "A-3" is in words and figures as follows, to wit:

Defendants' Exhibit "A-3."

ELECTRICAL INSPECTION DEPARTMENT
City and County of Denver.

Permit No. 3794.

To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at 137-15th St., owned by DENVER ELECTRICAL CO., has been inspected and approved by this department.

Inspected, Date—10-14-12.

Inspector—Thorn.

(Signed) JNO. MALM,
City Electrician.
S.

APPLICATION FOR A PERMIT TO ERECT
SIGN.

Denver, Colo., July 31st, 1912.

No. 2984.

To the Board of Public Works, City and County
of Denver.

Please issue to Prismatic Sign Co. subject to the authority conferred by Rules and Regulations of the Board of Public Works a permit to erect electric sign 24 ft. long by 32 inches wide, [61] and 6 inches deep, from the premises occupied by Denver Electrical Co. Said sign to be erected in front of premises located at 137-15th Street and not to project more than 18 inches from the lot line at outermost point of sign, as more fully appears by sketch on back of this paper.

The privilege is asked for 7 days from date, and we estimate it will probably be several months before any other sign in the same place will be required for the purpose of inspection. The work to be done subject to your rules and directions, and the general laws and ordinances of the city, and at our risk for any and all loss or damage occasioned to the city, either directly or indirectly and the amount of any judgment thereby obtained against said city shall be conclusive evidence of our liability.

PRISMATIC SIGN CO.

G. A. MACKENZIE.

O. K.—SETH B. BRADLEY,
President.

(Deposition of Otis B. Spencer.)

(Endorsed on side:)

Received of Prismatic Sign Co. 50¢ to cover cost of permit.

Oct. 15, 1912.

ALLISON STOCKER,

Treasurer.

Q. What can you say, Mr. Spencer, in regard to the date when these permits were applied for as shown by your records?

A. In this last instance the application itself is dated July 31, 1912, but I judge we held it up for investigation, for it was paid for on October 13, 1912, as shown by the treasurer's receipt upon the margin of the application. This often happens with this class of permits.

Q. What is shown on the reverse side of these applications for permits?

A. Well, very often there is a rough lead pencil [62] sketch showing the lettering and often the size of the sign.

Mr. O'BRIEN.—Part of the answer is objected to as not responsive to the question.

Q. Have you reproduced these rough sketches in connection with the applications for permits which have been produced here?

A. Wherever they have occurred, yes.

Q. Bearing in mind the regulations of your department and the customs of those who apply for permits, can you state approximately when the various signs referred to in these three permits,

(Deposition of Otis B. Spencer.)

exhibits "A-1-2-3," were completed and placed in operation?

A. I know of no reason why they should not be hung in place and in operation within the time limit given on the permit which is usually six days after its issuance.

Mr. O'BRIEN.—The answer is objected to as not responsive to the question.

Q. I note in all of these applications for permits which have been offered here the following at the bottom thereof: "O. K.—Seth B. Bradley, President." Who is Mr. Bradley and what is the purpose of this O. K.?

A. We have been very careful about the erections of signs in this city, and the regulations are stringent. Mr. Bradley was the president of the board, and usually these applications were referred to him for his approval before being issued.

Q. How soon after an applicant presented his application is the matter referred to Mr. Bradley customarily? A. At once.

Q. The same day? A. Yes, the same day.

Q. Before Mr. Bradley places his O. K. on the application what investigation is made by him or those working under him?

Mr. O'BRIEN.—Objected to as leading.

A. Mr. Bradley or one occupying his place sometimes makes personal investigation, but not often. He usually sends an inspector from our office to inspect the sign and place a report back to him.

[63]

(Deposition of Otis B. Spencer.)

Q. Has this Department of Improvements and Parks a seal?

A. I presume it has a seal, and that the secretary thereof is the custodian.

Q. Do you use a seal for yourself in the issuing or granting of these permits? A. Never; no.

Q. Have you carefully compared all of these copies which you have presented here with your original record? A. Yes.

Q. And are they true, correct and full copies?

A. Yes, so far as I know. I use great care.

Cross-examination.

(By Mr. O'BRIEN.)

Q. Mr. Spencer, who made the pencil notations on the back of application No. 2951, Defendants' Exhibit "A-2," if you know? A. I did.

Q. Was that copied from the original that was on the application blank?

A. Yes, it is right here. A. Yes, it was, Mr. O'Brien. There it is.

Q. And that was supposed to show the construction of the sign to be erected?

A. Oh, just to give you a rough idea of about what they propose to put up.

Q. There is nothing in the application itself to indicate what the construction of the sign was to be, otherwise than the size of it, and that it was to be erected in a certain way with reference to the street. What I mean is, the special construction of the sign, independently of its size, etc., was not indicated in the applications, any of them?

(Deposition of Otis B. Spencer.)

A. Well, I don't think that is hardly so, because they state they will erect an electric sign subject to our rules and regulations, giving the size, the place and for whom it is to be constructed, how far it will project into the street and, in this instance, the number of lights and the time they wanted to put it up in, etc. [64]

Q. You don't keep duplicates of the permits themselves issued on these applications?

A. I keep a stub of them, yes, a stub memoranda.

Q. About how long has the city been issuing permits such as these applications call for, if you know?

A. Well, over twenty years, and possibly longer I should judge.

Q. And you have been connected with the department that issues such permits how long?

A. In this capacity about twelve years I should guess.

Q. Why were the dates on Nos. 2951 and 2935 marked out on the copies which have been introduced in evidence of the applications to which you have testified?

A. I assume because the applicant brought them in or intended to bring them on that date, but the permits finally being issued at a later date, the first dates on the applications were thereupon erased, or a line struck through them.

Q. Then there is nothing except these dates that were stricken out on those applications numbered

(Deposition of Otis B. Spencer.)

2935 and 2951 to show when the applications were made?

A. Yes, the treasurer's receipt shows the absolute date on which they were issued.

Q. But I mean on the applications themselves?

A. Yes, the treasurer's receipts.

Q. But this shows when they were paid for, not when they were applied for, the receipts?

A. Yes, they were applied for previous to that.

Q. But there is nothing on the applications themselves, that is, the two in question, which shows when they were applied for?

A. Except the dates obliterated.

Q. And they were obliterated because they were incorrect; is that right?

A. They were obliterated because the permits were not issued on those specific dates. [65]

Q. But why should they be obliterated on that account? The applications would not necessarily have to conform in date with the dates of the permits, would they?

A. Yes, we always make them correspond with the date of the issuance of the permit.

Q. But when these dates were stricken out, then there were no dates at all, so there could not have been a correspondence of dates in that regard, could there?

A. Then the treasurer's receipt signifies the date.

Q. But that is not the date that the applications were made?

(Deposition of Otis B. Spencer.)

A. No, that isn't the date the applications were made.

Redirect Examination.

(By Mr. LOFTUS.)

Q. State whether or not the date appearing in the left-hand margin of each of these applications for permits, exhibits "A-1-2-3," represent the actual date when the permit was granted? A. Yes.

Mr. LOFTUS.—Before the present witness is dismissed counsel for the plaintiff is requested to state whether or not he has any objections to the copies which have been offered, of the original records, and if for any reason he objects thereto, then defendants will endeavor to procure photostat copies of these original records in order that there may be no question raised later as to the accuracy of these copies, it being apparent that the original records of the municipality cannot be offered in a case of this kind.

Mr. O'BRIEN.—I would prefer photostat copies as they are bound to be absolutely correct in every respect, and not only that—it is easy to get a considerable number of copies probably with less expense than to do it by typewriting. I should much prefer to have photostat copies, and if photostat copies are produced I would not object so far as the production of copies instead of the original is concerned. Otherwise I would simply let my objections stand as they are. [66]

Mr. LOFTUS.—Counsel for plaintiff is advised

(Deposition of Archibald Mackenzie.)

that the photostat copies will be produced as soon as they can be prepared.

Deposition of Archibald Mackenzie, for Defendant.

Thereupon defendant called ARCHIBALD MACKENZIE, who testified as follows:

I have previously testified in this case. I can identify the application No. 2935 from the book of records of the Department of Improvements and Parks of Denver, made by the Prismatic Sign Co., for permission to erect a sign on the premises occupied by the New York Floral Company, 526 Sixteenth Street. The application is in my handwriting. It was made July 29, 1912. I am familiar with the procedure necessary to obtain the permit to erect a sign in the City of Denver. The application is first submitted to the Art Commission, to obtain the O. K. from the Commission. Mr. Seth Bradley was President of the Board of Public Works. After Mr. Bradley put his O. K. on we would go to the Board of Public Works for a permit. I am familiar with Mr. Otis B. Spencer's initials. I believe this permit was finally issued August 19, 1912. The sign erected for the New York Floral Co., 526 Sixteenth Street, Denver, was finally erected—placed in operation—within seven days from the time this permit was taken out—somewhere in the neighborhood of the 19th to the 22d of August, 1912. When we had a sign finished and ready to hang we would have to go to the City Electrician and have him inspect the wiring before

(Deposition of Archibald Mackenzie.)

we could get a hanging permit to put it up. I can also identify Permit No. 2951, in the name of the Prismatic Sign Co., for the erection of a sign on the premises occupied by Mrs. Dubois, 757 Broadway.

Q. In whose handwriting is this? A. Mine.

Q. When was this application made?

A. August 27, 1912. [67]

Q. That date appears to be scratched over with a lead pencil. Do you know when that occurred—the date of August 27, 1912?

A. No, sir, I don't know why that was done. It says this privilege is asked for in seven days, but you see that was hung evidently within the seven days' time.

Q. Turning now to application for permit No. 2984 in the name of the Prismatic Sign Company for permission to erect an electric sign on the premises occupied by the Denver Electrical Company, 137 Fifteenth Street, can you identify this application? A. I can.

Q. In whose handwriting is it? A. Mine.

Q. When was that application made?

A. July 31, 1912.

Q. Was this sign erected? A. It was.

Q. When was it erected?

A. It was hung right about the time of October 15, 1912.

Q. Where is that sign to-day?

A. 137 Fifteenth Street.

Q. Is it in the same condition to-day as it was when you erected it? A. Yes.

(Deposition of Archibald Mackenzie.)

Q. When did you last see it?

A. About a half hour ago.

Q. Referring again to the sign erected for Mrs. DuBois at 757 Broadway, Denver, when was that sign completed and installed? A. September 3, 1912.

Q. Where is that sign to-day?

A. I couldn't say.

Q. When did you last see it?

A. Oh, I imagine six or seven years ago.

Q. How did that sign compare in construction with the one you erected for the Denver Electrical Company? A. Same construction.

Q. Similarly with regard to the sign referred to in application for permit No. 2935 on the premises of New York Floral Company, 526 Sixteenth Street, Denver, Colorado, was that sign erected and installed? A. It was.

Q. Where is that sign to-day?

A. I couldn't tell you.

Q. When did you last see it?

A. That sign was in place there [68] I would imagine for a little over a year. I haven't seen it for probably six or seven years.

Q. How did that sign compare in construction with the sign you erected for the Denver Electrical Company here? A. Same construction.

Cross-examination.

(By Mr. O'BRIEN.)

Q. When you refer to the sign erected for the

(Deposition of Archibald Mackenzie.)

Denver Electrical Company, which one do you refer to, if there was more than one?

A. We erected two for the Denver Electrical Company; the last one of the two.

Q. The dates which you have given with reference to the various applications for permit which have been introduced here in evidence I noticed you read from the applications themselves in the book which Mr. Spencer has produced. Is that the only way you have of fixing those dates, Mr. Mackenzie? A. Definitely, yes, sir.

Mr. LOFTUS.—Counsel for plaintiff is hereby invited to accompany attorney for defendants to 137 Fifteenth Street, in this city, a matter of five or six blocks, and there inspect the electric sign referred to in application for permit, exhibit “A-3,” said sign being now in use on the premises of the Denver Electrical Company in the same position as when originally hung. It is the intention of defendants, if possible, to remove this sign and procure a suitable part thereof to be offered in evidence, and this opportunity is given counsel for plaintiff to inspect the sign so that he may know that the portion to be offered in evidence has not been altered in any way. Likewise witness Mackenzie will be asked to inspect the said sign in its present condition, and testify as to any changes that may have been made since the time of its original installation. [69]

Mr. O'BRIEN.—Counsel for plaintiff will be glad to inspect the so-called sign referred to, but, by accepting the invitation to do so, does not waive

(Deposition of Thomas M. Norton.)

any objections which he may see fit to offer to any testimony that is offered concerning the sign, and particularly with reference to the part which apparently counsel for defendants proposes to introduce in evidence. In other words, the acceptance of the invitation does not waive any objections on behalf of plaintiff which his counsel may see fit to offer.

Deposition of Thomas M. Norton, for Defendant.

The defendant thereupon called THOMAS M. NORTON as a witness, who testified as follows:

My name is Thomas M. Norton; 2921 West Twenty-fifth Avenue, Denver; painting and papering contractor. I was in the electric sign business in the latter part of 1910, and up to about 1917, connected with the Prismatic Sign Company. I was one of the two partners. The other partner was Mr. A. Mackenzie. We made principally the Prismatic sign. It is a sign constructed of sheet metal with a prism plate located in the rear of the letter, the letter itself being outlined in some instances by a painted outline and in some instances by a raised metal molding. The sign was illuminated by electric lights inside the sign. Raised metal outline molding signs were made by the Prismatic Sign Company for the Denver Electrical Company's sign at 137 or 139 Fifteenth Street, Denver, a 5¢ sign (that is, reading on the sign 5¢) that was on West Colfax near Lipan. The florist sign made for the New York Floral Company, that

(Deposition of Thomas M. Norton.)

was on Sixteenth Street between Welton and Glenarm. A drug sign at Littleton, Colorado made for a druggist named Thompson. A sign reading DuBois on Broadway between Eighth and Ninth. The sign at Colfax and Lipan was made in 1911, I could not give the month, I believe, or 1912. It was made for Huffman the druggist. The other one at the Denver Electrical Company some time the first part of October; I won't say the very first, in the year 1912. The [70] DuBois and Floral signs, from memory, were made about July or August, 1912. All were alike with respect to the outline molding. Some are in use to-day.

Q. Which ones?

A. The Denver Electrical is still in use.

Q. When did you last see it?

A. I have seen it to-day.

Q. Did you examine it?

A. Yes, sir, we were over looking at the sign this afternoon.

Q. How does its present condition compare with its condition at the time you installed it?

A. Well, it was repainted last fall.

Q. Has its construction been altered in any way?

A. No, sir.

Q. Are you familiar with the procedure necessary to be gone through so far as the Department of Improvements and Parks is concerned, in order to get a permit to hang an electric sign in the City of Denver?

A. Yes, sir; I am.

Q. Just briefly tell us what that procedure is.

(Deposition of Thomas M. Norton.)

A. Before we start to make the sign we are expected to make out a rough sign, showing the sign, the construction and dimensions and some details of the sign, and apply for a permit to build the sign. Then we—after the sign is under way, then you have to have the sign inspected. You have to make out a wiring permit, and after the sign is completed, then you get your hanging permit to put the sign in place, and they issue you a permit. I have taken out a good many.

Q. Now, then, at the time the sign is inspected as to wiring, what is its condition? How far along is it?

A. Well, the sign is practically ready to hang.

Q. And after it is inspected and approved how soon thereafter is it hung?

A. Usually within two or three days.

Q. What was the practice of the Prismatic Sign Company in that regard?

A. We usually asked for the permit a day or two days before we put it up. Sometimes we hung it the same day we took [71] out the permit.

Q. Do you recall any instance where you waited six or seven days after the permit was granted in which to hang the sign? A. No, sir, I do not.

Q. Do you recall selling any signs to the May Company, a department store in this city?

A. Yes, sir.

Q. How many such signs did you sell to them?

A. We sold—will I give the different signs?

Q. Yes, if you can recall.

(Deposition of Thomas M. Norton.)

A. One sign reading "Excello Trousers"; I believe it also said "Finest on Earth." Another reading "Hannan Shoes," another "Silver Collars," and there were two reading "Society Brand Clothes."

Q. Which were the earliest of these signs?

A. The "Excello Trousers."

Q. Do you recall when that was installed?

A. That was installed—I think it was in the latter part of 1912.

Q. How did the construction of that sign compare with the one you erected for the Denver Electrical Company?

A. It is the same outlining moulding and the same construction all the way through.

Q. I show you a photograph which was offered in evidence at the taking of the Mackenzie deposition as exhibit "M-3," and ask if you are familiar with the sign shown therein?

A. Yes, sir; I remember it well.

Q. Is that the Excello sign you have just referred to? A. Yes, sir.

Q. I hand you a photograph which has been offered in evidence here at the taking of the Mackenzie deposition as "M-a-2," and ask if you recognize the sign shown therein. Yes, sir. I do recognize it.

Q. State what you know about that sign.

A. Well, it is the same metal outlining moulding.

[72]

Q. Where was that sign installed?

(Deposition of Thomas M. Norton.)

A. It was hung at Littleton, Colorado.

Q. Was that installed by your company?

A. Yes, sir.

Q. What is your recollection as to the time that that was installed?

A. That sign was hung some time in 1911.

Q. Where is that sign to-day?

A. I couldn't say. It has been taken down and I don't know where it is.

Q. Have you recently inquired about it?

A. Yes, sir.

Q. I will show you another photograph which is offered in evidence, Defendants' Exhibit "M-17," and ask you if you recognize the sign shown therein.

A. Yes, sir.

Q. Tell us what you know about that sign.

A. That is the same construction, the same prismatic glass and the raised metal outlining of letter.

Q. Where was that sign installed?

A. At Littleton, Colorado.

Q. What year?

A. It was hung just about the same time as the drug sign.

Q. Where is that sign to-day, if you know?

A. I couldn't say.

Q. Have you recently inquired about it?

A. Well, I was out to Littleton, but we didn't see the sign or anybody that knew anything about it.

Q. I show you a photograph containing a sign reading as follows: "Denver Electrical Co. Up-To-

(Deposition of Thomas M. Norton.)

Date Electric Fixtures," and ask you if you are familiar with the sign shown therein?

A. Yes, sir; I am.

Q. Tell us what you know about that.

A. Well, the words "Denver Electrical Co." were the same construction, with the prismatic glass and the letter outlined by this raised metal moulding. The lower line was a flat letter with a paint outline.

Q. Is that the sign you have testified was installed and hung in the early part of October, 1912?

A. Yes, sir.

Q. And is that the sign that you have testified is still in use? [73] A. Yes, sir.

Q. And that is the sign you saw to-day?

A. Yes, sir.

Mr. LOFTUS.—The photograph identified by the witness if offered in evidence as Defendants' Exhibit "A-4."

Mr. O'BRIEN.—Objected to as not having been sufficiently identified and as incompetent, irrelevant and immaterial.

Q. What has become of the New York floral sign, if you know?

A. Well, that sign was taken down from where it was hung and laid on the roof, and that is the last I know of the sign. We took it down.

Q. How long ago was that?

A. That was in the neighborhood of six years ago.

Q. And what has become of the DuBois sign?

(Deposition of Thomas M. Norton.)

A. I don't know. We was to see Mrs. DuBois this morning, and she is out of the city.

Q. And you mentioned a sign reading "5¢" in front of the theater at Colfax and Lipan. What has become of that sign?

A. That sign was in place until about a month ago, and they went to take it down themselves and dropped it down and broke it, and then they had it hauled away. I think we can probably get that sign back yet this afternoon.

Q. That is, what is left of it? A. Yes, sir.

Cross-examination.

(By Mr. O'BRIEN.)

Q. How long did it take to make a sign like that one, for instance, exhibit "A-4," Mr. Norton?

A. You mean the hours it would take one man to make it if he worked steadily?

Q. I don't care how you express it. How long did it take you folks to make it approximately?

A. Oh, in the neighborhood of two weeks.

Q. Was the sign made before you asked for the permit? A. You mean always? [74]

Q. Well, in this particular case.

A. Well, I don't remember this particular case. They have certain rules and oftentimes when we knew we were within their rules, we made the sign before we asked for the permit. If there was any doubt, we asked for the permit before we started the construction.

Q. How long has the city been asking permits for such signs as that?

(Deposition of Thomas M. Norton.)

A. I couldn't say. It was probably before we started in.

Q. Was the City of Denver granting permits for signs like that at the time you installed the sign at Littleton?

A. You mean the city of Denver?

Q. Yes. A. I believe they were.

Q. Well, do you say that that sign, exhibit "A-4," was made with raised metal moulding?

A. Yes, sir; the "Denver Electrical Co.," the top line, was all made with the raised metal moulding.

Q. What is there on that sign that indicates that raised metal moulding?

A. You mean that shows in the photograph?

Q. Yes, sir.

A. It shows the shading to the left; it shows the shading to the left in the latter part of the sign. You can see the shading on the left, when it is darker than the face and darker than the aluminum letter. This raised edge was painted usually a bright red. The face of the letter was aluminum. The raised edge was usually a bright red, and the face of the sign was either painted or smalted.

Q. What does the central dark line indicate in each one of the letters of the "Denver Electrical Co."?

A. That is the portion of the letter that the light from the prismatic glass shines through.

Q. What does the white part of the letter indicate in the photograph?

A. That is the bevelled edge that tapers from the

(Deposition of Thomas M. Norton.)

raised edge down to the base of the sign, and covered with [75] aluminum or gold leaf or paint, for the purpose of making a better sign in the daylight.

Q. So far as the photograph shows, there is nothing indicates a bevel, is there, Mr. Norton? Doesn't it look perfectly flat to you so far as anything shown on that photograph is concerned?

Mr. LOFTUS.—Objected to as incompetent, irrelevant and immaterial.

A. The moulding surfaces receiving the greater number of the sun's rays appear brighter than those receiving the lesser number, whereas in the flat letter in the line below, all portions of the letter appear to be equally brilliant.

Q. How was this sign made, that is, the part which you say constitutes the raised metal moulding?

A. Well, to start with, the letters are laid out, and the part to be illuminated is removed. Then the metal moulding is mitred and cut to fit the various letters and soldered in place, the bevelled portion being painted to give a better daylight effect, the raised edge of the molding usually being painted a bright red and the background being painted or covered with a smalt.

Q. You say the letter was first laid out. What do you mean by "laid out," Mr. Norton?

A. Well, the letter was outlined by lines on which to cut out the part to be illuminated.

Q. Does the dark line indicate in those words,

(Deposition of Thomas M. Norton.)

“Denver Electrical Co.,” the part that was cut out?

A. Yes, sir.

Q. And the white indicates the raised metal part?

A. Yes, sir; I call that the bevelled portion.

Q. What is shown white—the part shown white?

A. That is the bevelled portion that rises from the dark part to the edge; that is painted red—spoken of as painted red.

Q. Which way does the raised part bevel or incline with reference to the dark part? I speak with reference to this photograph now. [76]

A. Away from the face of the sign; outward from the face of the sign.

Q. And how do you say that raised part was formed for each letter?

A. It is bent to shape in a brake, what they term a brake; it is a bending machine. They are formed in lengths of several feet, and then they are cut and fitted to form joints at the miters and angles, and secured to the face sheet of the sign by soldering.

Q. What is the height of each of those letters in the words “Denver Electrical Co.” in the actual sign, approximately? A. About ten inches.

Q. You said in your last answer that the raised metal part was made in lengths of several feet.

A. Yes, sir; and that is cut in several pieces to fit around the different portions of the letter.

Q. Is the raised metal part for each letter a single piece, or is it in two distinct pieces?

A. It is in several pieces. In an “O” it is eight

(Deposition of Thomas M. Norton.)

separate pieces outside and eight separate pieces inside.

Q. Is the part that is outside of the dark line in the photograph, and also that is inside of the dark line—are they all one piece or two pieces, that is, after the letter is formed? What I mean is, does what appears to be the dark line in those letters “Denver Electrical Co.” separate two raised metal parts shown by the white of each letter? To my view there is a white line on each side of the dark line of each letter. A. Yes, sir.

Q. Now, you said the dark lines represents the part that the light shines through. A. Yes, sir.

Q. What I want to know is if the raised metal part on the outside of the dark line and also on the inside of the dark line all form one piece or two pieces in the letter?

A. In different letters it is different. [77]

Q. In a single letter—is it all one piece in a single letter, the raised metal part?

A. In the L after it is soldered it is one continuous piece clear around the L. The O it is two separate pieces, one outside continuous and one inside continuous.

Q. Then you would cut out the outline of the letter in the metal plate, and put raised metal parts on both sides of it and solder those parts to the plate; is that correct?

A. Yes, sir, that is correct.

Q. In Defendants, Exhibit “M-a-2” the appearance of the letters is entirely different from that in

(Deposition of Thomas M. Norton.)

Defendants' Exhibit "A-4," and yet, as I have understood your testimony, both signs were made in the same way. How do you account for the difference in appearance?

A. Well, in the Denver Electrical Co. the bevelled face of the letters is aluminum, the raised edge dark red, and the face of the sign a black smalt. In the drug sign at Littleton the bevelled portion of the letter is aluminum, the raised edge was the red, and in addition to the red shading on the raised edge there is a painted shade to make the letter appear to be raised above the surface.

Q. Well, then, is it true that the letter is not actually raised above the surface in Defendants' Exhibit "M-a-2"?

A. It is raised above the surface, but the painted shade is in addition to the raised metal moulding as in the Denver Electrical Company sign. It is the same construction only it has the painted shade in addition to the raised metal moulding.

Q. Then a photograph of such a sign is a very inaccurate illustration, is it not, so far as giving anyone a definite idea of the construction of the letters?

Mr. LOFTUS.—Objected to as incompetent, irrelevant and calling for a conclusion or opinion of the witness.

Q. I will elaborate that. To illustrate, I will say that the one sign, namely, Defendants' Exhibit "M-a-2," has an entirely different appearance from Defendants' Exhibit "A-4," and you say the

(Deposition of Thomas M. Norton.)

only thing that causes this difference in appearance is a [78] little paint, as I understand it. From that standpoint I want to know if you consider a photograph is a correct illustration of the construction of the sign?

Mr. LOFTUS.—Last objection repeated.

A. This photograph of the drug sign clearly shows the shade on the raised metal edge of the sign in addition to the painted shade on the face of the sign, and this sign had both.

Q. But without an explanation do you think anyone, in looking at the two signs, would think they were both made in the same way?

Mr. LOFTUS.—Same objection.

A. Yes, sir; I believe anyone who is familiar with this construction of sign by the shading on the bevelled portion of the letters, could tell whether it has raised surface or not irrespective of the paint.

Q. But could they understand the degree of raise?

Mr. LOFTUS.—That is objected to as it has no bearing whatever on the issues, what this witness thinks. Others may know. He can only answer for himself. He can state whether he regards the two as being alike. It is clearly incompetent for him to testify what someone else might conclude from looking at these photographs.

A. I doubt if they could understand the degree of raise. They could tell there is a difference in the angle that is exposed to the rays of the sun, so that they could tell there is a raise to the bevelled surface.

(Deposition of Thomas M. Norton.)

Q. How was the part of the sign "Up-To-Date Electric Fixtures" made?

A. Simply the central portion was cut out; no moulding was soldered on; simply the part showing white in the photograph was simply painted flat upon the flat surface of the sign plate.

Q. That is, the white part of the letters "Up-To-Date Electric Fixtures" in exhibit "A-4" was painted on instead of being formed [79] by raised metal?

A. It is put on with aluminum leaf on the surface of the sign face.

Q. The leaf simply being applied to the surface of the metal around the cut out part?

A. Yes, sir.

Q. You said that the Denver Electrical Company's sign, namely, exhibit "A-4," was installed, as I understood you, the first part of October, 1912. How do you fix that date?

A. Well, I was down to the city electrician's office, looking up records, and the Board of Public Works, looking up records—when the electrical permits were taken out and different hanging permits.

Q. But you have no other way of fixing the dates? A. No, sir.

Q. Why do you say the first part of October, 1912? If you have looked up these dates why can you not make it more definite?

A. Well, I have a good many dates I was trying

(Deposition of Thomas M. Norton.)

to remember, and I had it approximately in my mind.

Q. Did you say that the sign designated Defendants' Exhibit "M-3" was made in the same way as the words "Denver Electrical Co." in exhibit "A-4"?

A. Yes, sir; in precisely the same way.

Q. But to my view in the Defendants' Exhibit "M-3" the entire part of each letter shows completely white, while in the "Denver Electrical Co." there is a dark line between two white lines in each letter. How do you account for that difference?

A. Why, the reflection from the arc lights on the glass surface on the sign, as well as on the silver portion of the letters in exhibit "M-3," and also from the flashlight that was used when the photograph was taken, as well as the sign being illuminated at the time the picture was taken.

Q. Is there anything in that exhibit "M-3" to indicate that the light shines through any part of the letters as the dark line in "Denver Electrical Co." of exhibit "A-4"?

A. The central portion or the illuminated part of the letters is more brilliant than the moulding [80] surrounding this part (indicating) because of the illumination from the interior.

Q. Was the sign illuminated at the time that photograph was taken in exhibit "M-3"?

A. Yes, sir; it was.

Q. Is that also true of exhibit "A-4"?

A. No, sir.

(Deposition of Thomas M. Norton.)

Q. Then exhibit "A-4" was not illuminated at the time that photograph was made? A. No, sir.

Q. How about exhibit "M-a-2," was that illuminated at the time the photograph was made?

A. No, sir.

Q. How definite was the sketch furnished at the time you applied for a permit to put up a sign of this character?

A. Well, we gave the size of the letters, the width of the face of the sign, the depth of the sign, as well as the length.

Q. That was all contained, as I understand it, in the application, in the wording of it, but I understood you to say that you were obliged to furnish a rather definite sketch, giving details of construction. Please make that a little more definite.

A. Well, there was really no details. We were expected to make the sign so that when it was hung it would be safe as well as not be detrimental to the appearance of the street.

Q. Then do I understand that the Denver Electrical Company sign is the only one of these signs still in use to-day; that is, the only one of those that you have mentioned?

A. Yes, sir. That 5¢ sign at Colfax and Lipan was in use until about a month ago.

Q. You mean the one at West Colfax near Lipan?

A. Yes, sir.

Q. You state that was installed some time in 1911. Can't you make that more definite?

A. Which was that?

(Deposition of Thomas M. Norton.)

Q. The one at West Colfax near Lipan. At least, I understood you to say some time in 1911.

A. Well, I think it was the early part of 1911.
[81]

Q. But you have no way of fixing the date?

A. I haven't just right immediately; no, sir. I believe I can get the date.

Q. Did you testify that the sign was usually hung about the same time you got the permit?

A. The hanging permit; yes, sir.

Q. Did you get a hanging permit as well as an original permit; that is, were there two different permits that you obtained?

A. It was the application for a permit, and then they issue the permit on that application.

Q. But you wouldn't construct the sign, would you, until after you got the permit?

A. Oftentimes we did; yes, sir; where we knew the rules and knew our sign was within the rules we went ahead without the permit. For instance, in certain sections of the city they allow us to project the line six feet from the lot line. For instance, we had a hotel sign; we usually went down—we would go down and take out the permit, have it inspected, and then hang the sign. In that case the sign was made before the permit was asked for, and other signs—even special signs. When we knew we were strictly within the rules, the sign was made and finished before the permit was asked for.

Q. Has the city, so far as you know, always

(Deposition of Thomas M. Norton.)

granted these permits for signs to extend beyond the lot line?

A. As far as I know; yes, sir. On different streets they allow different projections.

Redirect Examination.

(By Mr. LOFTUS.)

Q. What has become of those permits that were issued?

A. Some of them were kept and some of them were not. We didn't feel that they had much value, and we didn't keep all of them. We still have some.

Q. Have you the one pertaining to the Denver Electrical Company's sign which is shown in photograph, exhibit "A-4"?

A. I am not sure. I would have to look that up.
[82]

Q. How long would it take to look?

A. I think we could find out this evening.

Q. I wish you would do so, and if you find it, produce it to-morrow, and likewise as to the New York Floral, the DuBois and the 5¢ sign. You mentioned submitting a sketch with the application for permit. Was that a sketch separately submitted, or one contained on the back of the application?

A. As a rule, it was simply contained on the back of the application.

Q. And what did that consist of—more than one view?

A. No, sir; just simply a rough sketch to show the lettering and the dimensions of the box and the size of the letters—not necessarily the size of the

(Deposition of Thomas M. Norton.)

letters; just simply show it didn't project beyond their limits and stayed within the requirements of their rules.

Q. Were any permits issued to you for the hanging of the May Company's signs in Denver?

A. No, sir.

Q. Why?

A. There is no permit required where it is inside of the lot line.

Q. These signs, as I understand it, were inside the store?

A. Yes, sir. There probably were electrical permits; I am not certain; but there were no hanging permits.

Q. What about the Littleton signs; were there any permits for those?

A. No permits required.

Q. When soliciting an order for a sign what did you show your prospective customer—a sample or a sketch, or what?

A. Sometimes we showed a sample; sometimes we showed the other signs, and then to show the sign to a little better advantage we would oftentimes make a sketch to scale; usually showed a sign as it would appear after it was finished, something as a photograph.

Q. Do you recall what was submitted to the Denver Electrical Company in procuring their order?

A. Yes, sir, I do; I remember the sketch. [83]

Q. How complete was that sketch?

A. Well, that simply showed the entire letter

(Deposition of Thomas M. Norton.)

above the bevelled surface and the part to be illuminated, but made no distinction—showed it as one open part of the letter the full width of the bevelled portion and the central part where the light shines through surrounded by a black surface.

Q. Had you succeeded in getting an order for this Denver Electrical Company's sign shown in photograph, exhibit "A-4," prior to the time you applied for a permit? A. Yes, sir.

Q. In other words, you wouldn't apply for a permit before you had shown the sign?

A. No, sir.

Q. How long did these permits usually hang fire or pend in the office of the Board of Public Works?

A. I think they read about seven days.

Q. That is after they are issued?

A. After they are issued, yes, sir.

Q. But from the time you apply for a permit, how long before it is granted?

A. It is granted when we apply as a rule. I don't quite get the meaning of the—

Q. When you turn in your application for a permit—

A. Well, that holds until you go down and give them the fee, when they issue your permit.

Q. And then the permit is issued when you give them your fee? A. Yes, sir.

Q. But prior to paying the fee there are some preliminaries to go through?

A. No, sir, not necessarily. You see before we would make that sign we would take it up and have

(Deposition of Thomas M. Norton.)

it O. K.'d by a member of the Art Commission, and then they would have to say that you could hang the sign after it was made. After it was completed you would make out an application for a hanging permit, and they would issue you that permit while you were there, on the payment of the fee.

Q. It would only be issued after all inspections were complete? [84]

A. Yes, sir; it would be issued after all inspections were complete.

Q. And before starting the construction of the sign you would apply for a permit?

A. A sign that we were not sure whether they would allow it to go up, but a standard sign that we felt sure that it was made according to their rules, we often made the sign before we asked for the permit to hang, as well as before the wiring inspection was asked for.

Deposition of Clark Rider, for Defendant.

Thereupon defendant called CLARK RIDER, who testified as follows:

My name is Clark Rider. I reside at 200 South Gilpin Street, Denver, Colorado. I am an electrical contractor and fixture dealer. My place of business is 137-139 Fifteenth Street. The business is carried on under the name of Denver Electrical Company. I am the owner. I have been in business in Denver since prior to 1910, under my management. I purchased two signs from the Prismatic Sign Co. of Denver. The latter one is in use to-day.

(Deposition of Clark Rider.)

It is now installed in the front of my building. It was erected as nearly as I can tell, about the 15th of October, 1912. It has not been changed in any respect since the time it was originally installed. It has been in use constantly since the time it was installed.

Cross-examination by Mr. O'BRIEN.

The sign is equipped for illumination. It is turned on whenever we have anything doing here; a parade, or anything like that. I can illuminate it. I have a switch on it. I can show you how it operates. There are lights inside of it, hanging down—inside the top of the border. They are fastened on the top inside of the sign. It is a box sign, you know, and they hang up in. I know the construction of it. The sockets are in the top. It is a box and the lights hang straight down from the top.

Q. Is there a separate piece of glass for each letter, or what sort [85] of transparent or translucent material is it?

A. Is there a separate piece of glass for each letter?

Q. Yes.

A. Now, I will have to look for a little technical point like that. It has been so long since it was put up that I don't remember.

Q. You don't know whether they are separate pieces of glass or one continuous piece of glass right along?

A. I would have to look at that. I wouldn't like

(Deposition of Clark Rider.)

to answer that point without looking at it, but I can look at it very shortly and see how that is done. There is little slide doors, and I can look in there and see how it is made very shortly.

Q. When do you say you purchased the sign?

A. Why, about the 15th of October, 1912.

Q. Why do you say "about"? Is that as nearly as you can—

A. I will tell you why. I am going from the time the permit was taken out. Say we hang up a sign to-day, maybe it may not be inspected to-day; it may not be inspected until to-morrow. See? But all electric signs you must have a permit. I would not have a permit for that sign if it would not be an electric sign. In this case it takes two permits; one for the man that hung the sign, and one for the man that does the electric work. If it had been a board sign I would not have needed to take out a permit at all, so there couldn't be only within a couple of days there from around about the 14th or 15th. The only thing I can go by is the permit. You know a man can't go back that far and testify to a thing for a certain day unless he looks up the record.

Q. What do you know about the permit?

A. That is the history of the permit at the City Hall; that is the day the permit was taken out.

Q. Haven't you anything to show what time the sign was delivered to you?

A. No, I can only take it from the time it was hung up, [86] you know—from the time the sign was hung up and connected up.

(Deposition of Clark Rider.)

Q. When was it paid for?

A. Well, now, I would have to go back quite a ways to look that up; I could find it.

Q. You could look that up?

A. I guess I could, but I would have to go back quite a ways. I have those papers at my house in my basement. In that time I guess I have had seven bookkeepers, but my papers from the time I started business is all out home. I could find it the chances are.

Q. Did you pay for it at the time it was delivered?

A. Oh, it wouldn't be paid just the day it was delivered. We don't pay for our stuff the day it is delivered. It would be paid within a reasonable time just like you know if you might have a cash—if I do business with you, you might have the cash, but we don't; we have an open account; we do business by the month. If we get a bill on the last of the month, we pay the 1st or the 15th of the next month. If the man needed the money badly I would pay him cash. I would pay it when it was put up if he needed the money.

Q. Whom did you deal with directly—what individual?

A. It was one of the Mackenzie brothers; I don't know which; I know the man when I see him; there is two of them, but I don't know what his given name was—couldn't tell you, but it was one of the sons. At the time the father was interested; I don't

(Deposition of Clark Rider.)

know whether he had any stock in the company at that time, but he was with them at that time.

Q. Were they doing business as the Prismatic Sign Company at that time? A. Yes.

Q. Did you make a contract with them to construct and install the sign, etc.?

A. Yes, they were to put up a certain sign for so much money.

Q. Have you that contract; is that contract in existence?

A. Oh, you mean a written contract that they would put it up for so much money? [87]

Q. Yes.

A. My recollection is—of course, it is a good while ago. At the time it was a verbal contract they were to put it up for so much money. I don't believe it was a written contract. It was to be put up for so much money. I don't think it was a written contract though. I ain't sure—couldn't answer that.

Q. Did you begin to use the sign just as soon as it was put up?

A. Yes. I bought the sign prior—I had bought the sign prior to October 15, 1912, because that would be the limit, you know, when a permit was taken out; the sign would be installed then you know. The sign was bought before that. They would have to make the sign. I don't know how long it took them to make it.

Q. Wouldn't they get the permit before they would make it?

(Deposition of Clark Rider.)

A. No, not the wiring part; it ain't necessary. If I wire a house it ain't necessary to get the permit until I want it inspected.

Q. But in order to install the sign—they couldn't install it without a permit?

A. No, they have got to have a permit before they can hang it. They can't hang the sign up until they get a permit, and I can't have the sign hung up either until I get a permit.

Q. Do you know what was the date of the permit for hanging this sign?

A. I say it is around about October 15, 1912.

Q. But that would necessarily have been obtained before the sign was hung?

A. It wouldn't need to. It could be taken out the same day. It could be taken out before if they wanted to, but they couldn't take out the permit after they hung the sign.

Q. Do you know the sign was hung the same day the permit was obtained? A. No.

Q. Do you know how long afterwards; it couldn't have been hung before, could it? A. No.

Q. It must have been hung after the permit was obtained? A. Yes, sure. [88]

Q. Have you any way of fixing the time that it was hung with reference to the time the permit was dated?

A. No, the only way I could do that is from the City Hall record. You see we don't get that permit—the hanging permit. We get a duplicate of the electrical permit. I could look that up, but it

(Deposition of Clark Rider.)

would take some time to look that up—to go back that far. I have it.

Q. You have the permit, have you?

A. Oh, yes, we get a duplicate you know. They keep one at City Hall and they give us one; that is for the electric wiring of the sign.

Q. So far as I know, no permits have as yet been put in evidence. Have you recently seen the permit for hanging this sign?

A. I have recently seen the record of it, yes.

Q. At the City Hall?

A. It came from City Hall, yes, the record of it.

Q. What did that record state with reference to the date? A. Why, October the 15th, 1912.

Q. Are you sure of that? A. Yes.

Q. Do they keep duplicates of the permits at the City Hall?

A. Yes, they have it all down there, when the sign was hung and when it was inspected. I had a record of that in my pocket. (Looking through papers taken out of pocket.) I may have left it at home, though. You can get that right off the books at City Hall. That is the best of my knowledge, October 15, 1912.

Q. How long did it take to install the sign after the workmen came here? A. Oh, to put it up?

Q. Yes.

A. Oh, that would be done the same day. It wouldn't take long to put it up.

Q. They had to make electrical connections, did they not?

(Deposition of Clark Rider.)

A. Well, we made that; we made the electric connections; we made that in a couple of hours.

Q. But you can't state now the date the sign was actually brought [89] here to be installed, can you, Mr. Rider?

A. No, I can't, not now. That is a little too far back for me.

Q. Might it not have been as late as October 20, 1912? A. No, it couldn't be that late.

Q. Why do you say it couldn't be?

A. Well, by the records of the permit, because I know the city wouldn't allow you to hang a sign up unless you have a permit. That is the law. You can't take a chance.

Q. I know, but they wouldn't compel you to hang it on any particular day after the permit was issued?

A. After you get the permit you can hang it any day you want to.

Q. Yes, but they didn't compel you to hang it the day the permit was given, so how do you know it was not hung four or five days after the permit was given?

A. We don't hang signs; we do the wiring of it.

Q. Yes, but I want to know if possible, Mr. Rider, and it is really somewhat important in this case or I would not be interrogating you, just when the sign was hung as nearly as you can state. Now, of course, if you can't state exactly, I want to find out what the best of your knowledge is, and my question is, can you state positively that it was not

(Deposition of Clark Rider.)

hung or installed as late as the 20th of October, 1912? A. No, I don't think it was that late.

Q. But you can't say that it was not that late?

A. No. To the best of my knowledge it was around about the 15th, to the best of my knowledge.

Q. The 20th wouldn't be far from the 15th, would it, Mr. Rider?

Mr. LOFTUS.—Objected to as immaterial.

A. No.

Q. Have you ever had the sign repaired since it was installed?

A. Only painted and put in new lamps, of course; that is all.

Q. Did it work satisfactorily from the very start?

A. Yes. [90]

Q. Do you know how long the city of Denver has permitted the hanging of signs which project over the lot line above the sidewalk?

A. As I have said before, we don't have anything to do with hanging signs. We only wire signs, and get a permit to have it inspected; that is all. We don't need to go into that.

Q. You have to get the permit yourself, do you, to have it inspected?

A. That is all. That is a different department at the City Hall, the electric department, but we don't have anything to do with hanging the sign at all.

Q. No, but what I want to know is do you have to obtain the permit, the inspection permit I might say, or do the people that sell you the sign have to get that permit?

(Deposition of Clark Rider.)

A. No. I have to get that if I wire it, but if they were doing their own wiring, *they* they would have to get it.

Q. They didn't do any electric work at all?

A. Not at that time. They may later on have done their own electric work. Of course, naturally, my being in the business, I wouldn't let anyone else wire a sign that was going up in front of my business unless I wire it myself.

Q. Was this the first sign of this appearance that was erected here, so far as you know?

A. I bought two signs off of them. I bought one before that, a small sign for a different address.

Q. But that was not of this construction?

A. Yes, it was similar, but they had a flat letter instead of a concave letter, if I am not mistaken. It was a prismatic sign though, a short one.

Q. That is, installed by the Prismatic Sign Company? A. Yes.

Q. (Question read to the witness.) "But that was not of this construction?"

A. To the best of my knowledge. If you will examine that letter, the lower line now is flat. It is not a concave; the upper letter is; and to the best of my knowledge the other sign was, both the Denver Electrical—both line was flat. [91]

Redirect Examination.

(By Mr. LOFTUS.)

Q. What do you mean by a concave letter, Mr. Rider?

A. Well, I mean by tilting it the right way. I

(Deposition of Clark Rider.)

don't know whether you would call it a concave letter or not—a letter that is sunk in. In other words, it is—I don't know whether I can draw it the way I see it in my eye.

Q. Do you mean it has a raised moulding?

Mr. O'BRIEN.—Objected to as leading.

A. The first one, there is a hole cut in it, leaving the light through. The first letter, to the best of my knowledge, was what is called a flat letter—flat, you know. Now, the next one—this one here—that is a different design. It is—you might call it a bevelled letter. It is sunk in anyway. That is out of my line, that there letter business. It is a—I can't just explain myself rightly on that, but I can sort of draw a picture of it.

Q. Will you please make a sketch of the raised letter.

A. Well (drawing on a piece of paper), that is something—I have a designer here that can make it, but I can't. I employ a designer to make pictures, but I can't make them myself. I think we can boil this letter business down considerably here. If I get the right definition of it here—can you tell from that what that there means there—what I mean by a raised letter? This letter (indicating by drawing on paper) is higher here (indicating) than the face of the sign; it extends out and it also slopes in; from the outer edge of the letter it slopes in to the center.

Q. Prior to buying one of these signs yourself,

(Deposition of Clark Rider.)

that is, with the raised moulding, had you seen any of them installed?

A. That is the first one I ever seen. The first I bought was the first one I ever seen, and that was the first raised letter I ever seen.

Q. How did you come to purchase this sign from the Prismatic Sign [92] Company?

A. Well, they thought I was in a good place here to advertise a sign for them. They was just going in business, and I made an agreement with them for so much money, and I was doing a little wiring for them, don't you know, doing a little wiring, and that applied on the sign.

Q. Did they show you a sample of this sign before you purchased it?

A. Yes, they had a sample of it; yes.

Q. Did the sample have the raised moulding?

A. Now, I can't tell you that. You mean the last one or the first one?

Q. The last one. In other words, was the sample you saw like the letters in the upper line of your present sign? A. I couldn't answer that question.

Q. Can you fix approximately the date when you agreed to purchase this sign? That is, how long before it was finally installed?

A. I can't go back that far.

Q. Was it a matter of months?

Mr. O'BRIEN.—Objected to as leading.

A. Oh, no, no. To the best of my knowledge it was within thirty days.

(Deposition of Clark Rider.)

Q. Who showed you these dates on the permits that you mentioned in your cross-examination?

A. Why, I can't tell you the man's name unless I look on my record.

Q. Where was he from?

A. From Denver as far as I know. He might have been outside so far as I know.

Q. He wasn't from San Francisco?

A. No, I don't think—I think he was from Denver so far as I know.

Q. What kind of a looking man was he?

A. Well, he was a heavy set man, about—

Q. What did he say to you; do you remember what he told you?

A. Well, he asked me what dates this sign was put up, and I told him as near as I could tell him around about October 15, 1912. [93]

Q. And he had with him a record of those dates, did he?

A. Yes, and then when I looked at the record I said "Now, that is just as near as I can tell." He asked me what date the sign was hung, and all those same questions you are asking me, and I couldn't tell him. All I could do was go through the dates of the record.

Q. Did he tell you whom he was representing?

A. He says that he was an attorney.

Q. Was his name Griffin, G-r-i-f-f-i-n?

A. I believe that was the name as near as I can tell you. I am not positive about that name.

Q. How long ago was he in here?

(Deposition of Clark Rider.)

A. About a week ago.

Q. You said that you had done wiring for the Prismatic Sign Company. Do you recall any signs that you wired? Can you state what those signs were? A. The same kind of signs as this.

Q. Do you recall one reading "New York Floral Co."?

Mr. O'BRIEN.—Objected to as leading, also as improper redirect examination.

A. No, I couldn't tell you what names they were now.

Q. I show you a statement rendered to Mackenzie Bros. on billhead of the Denver Electrical Company, dated August 15, 1912, and ask if you can identify that?

Mr. O'BRIEN.—Objected to as not proper redirect examination. A. Yes.

Q. What does that statement represent—what sort of works?

Mr. O'BRIEN.—Same objection.

A. To wiring—to work on a prismatic sign.

Q. Was that statement rendered by your company?

Mr. O'BRIEN.—Same objection.

A. Yes.

Q. At the date shown thereon? [94]

Mr. O'BRIEN.—Same objection.

A. Yes.

Q. And do you recall what kind of a sign that was?

Mr. O'BRIEN.—Same objection.

(Deposition of Clark Rider.)

A. A prismatic sign.

Q. And was that the same kind of a sign that you have in front of your building here?

Mr. O'BRIEN.—Objected to as leading and improper redirect.

A. Same construction.

Q. (Mr. LOFTUS.) The statement identified by the witness is offered in evidence as Defendants' Exhibit "A-5."

Mr. O'BRIEN.—Introduction of the exhibit is objected to as entirely immaterial, also as a part of improper redirect examination, and entirely incompetent, apparently having nothing whatever to do with the questions involved in this suit.

Q. I note an item on that statement, exhibit "A-5," reading as follows: "Permit, \$2.00"; what does that refer to?

Mr. O'BRIEN.—Same objection.

A. Well, that is for permit you must pay to have a sign wired.

Q. That is a permit you get from the city?

Mr. O'BRIEN.—Same objection.

A. Electric permit, yes.

Q. And you apply for that and pay for the issuance of it?

Mr. O'BRIEN.—Same objection.

A. Yes.

Q. That would be shown in the records at City Hall?

Mr. O'BRIEN.—Same objection.

A. Yes, sir.

(Deposition of Clark Rider.)

Q. And would have been issued prior to the date of that bill?

Mr. O'BRIEN.—Same objection to all these questions. [95]

A. Yes, you would have to get the permit before you would render a man a bill.

Q. How was that permit issued—in your name?

Mr. O'BRIEN.—Same objection.

A. Denver Electrical Company.

Q. And a copy of that is given to you and one retained by the city; is that the system?

Mr. O'BRIEN.—Same objection.

A. Yes, sir.

Q. Is the name of the sign stated on the permit?

Mr. O'BRIEN.—Same objection.

A. Not necessarily.

Q. Do you know whether or not the permit is issued before the inspector comes around?

Mr. O'BRIEN.—Same objection.

A. It must be.

Q. It must be issued before the inspector comes around?

Mr. O'BRIEN.—Same objection.

A. Yes.

Q. I show you a copy of an electrical inspection certificate which has been offered here in evidence as a part of exhibit "A-1," and which reads as follows:

Permit No. 2894

"To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at
526 16th Street owned By NEW YORK FLORAL

(Deposition of Clark Rider.)

CO., has been inspected and approved by this department.

Inspected—8-17-12.

Inspector—Oliver.

(Signed) JNO. MALM,
City Electrician."

Have you ever seen a similar permit or the original of that copy?

Mr. O'BRIEN.—Objected to as improper redirect and also as irrelevant and immaterial.

A. Yes.

Q. Did you have anything to do with the wiring referred to in that permit? [96]

Mr. O'BRIEN.—Same objection.

A. Yes, we done the wiring and got the permit.

Q. Do you recall that sign, "New York Floral Co."?

Mr. O'BRIEN.—Same objection.

A. No.

Q. What is there about the permit that enables you to say that you did the wiring on that job?

Mr. O'BRIEN.—Objected to as leading and improper redirect.

A. Well, I will tell you; I was doing their wiring at that time.

Q. Then, to the best of your recollection, the permit referred to in the statement, Exhibit "A-5," is the one shown by Exhibit "A-1"; is that correct?

Mr. O'BRIEN.—Same objection.

A. What are you going to number this one here? There are two different permits there.

(Deposition of Clark Rider.)

Q. That is a part of "A-1."

A. Well, don't you have this one numbered too?

Q. The notary does that.

A. You have two permits from two different places, one electric permit and the other for hanging the sign.

Q. The electrical inspection certificate is the one referred to. (Question read to the witness.) "Then, to the best of your recollection, the permit referred to in the statement, Exhibit 'A-5,' is the one shown by Exhibit 'A-1'; is that correct?"

A. I couldn't answer that.

Q. You haven't looked your records up for the purpose of testifying here?

Mr. O'BRIEN.—Same objection.

A. No, sir, I have not.

Mr. O'BRIEN.—Without waiving my objections, I will ask the witness a question or two on recross-examination.

Recross-examination. [97]

(By Mr. O'BRIEN.)

Q. Mr. Rider, when Mr. Loftus asked you what was the construction of the work that you did the wiring on, represented by exhibit "A-5," I understood you to say the same construction, meaning the same construction as the sign now installed above your store. By that you didn't mean the same construction of letter, did you?

A. Which is exhibit "A-5"?

Q. This one. (Above question read to the witness.) A. No.

(Deposition of Clark Rider.)

Q. You simply meant it was an electrical sign, wasn't that the idea?

A. Yes. I couldn't testify whether it was a flat or a raised letter.

Q. It might have been one or the other, or both?

A. It might have been one or the other.

Redirect Examination.

(By Mr. LOFTUS.)

Q. Any way that you can find out what this sign was that is referred to in the statement exhibit "A-5?"

Mr. O'BRIEN.—Objected to as improper redirect.

A. None now that I know of.

Q. There is no way that you know of now?

A. Not now; no.

Q. Who was doing the actual wiring at that time, you or someone in your employ?

Mr. O'BRIEN.—Objected to as leading and improper redirect.

A. I can't answer that.

Q. Did you have men working for you at that time?

Mr. O'BRIEN.—Same objection.

A. I had.

Q. Did you send them out on jobs of wiring at that time?

Mr. O'BRIEN.—Same objection.

Q. Yes, but I don't remember the man's name now that wired the sign any more. [98]

Q. You don't recall doing it yourself?

(Deposition of Thomas M. Norton.)

Mr. O'BRIEN.—Same objection.

A. No.

Mr. LOFTUS.—During the recess the letter O in the sign of the Denver Electrical Company, illustrated in photograph, exhibit "A-4," has been removed under the supervision of the witnesses Mackenzie and Norton, and in the presence of counsel for plaintiff.

**Deposition of Thomas M. Norton, for Defendant
(Recalled).**

THOMAS M. NORTON, being recalled, testified as follows:

Direct Examination.

(By Mr. LOFTUS.)

Q. Have you since you were last on the stand removed a portion of the sign of the Denver Electrical Company shown in photograph, exhibit "A-4"?

A. Yes, sir; I helped remove it. There were two of us working on it.

Q. Have you that portion with you?

A. Yes, sir; I have.

(Witness produces letter O.)

Mr. LOFTUS.—The letter O removed from the Denver Electrical Company's sign, just produced by the witness, is offered in evidence as Defendants' Exhibit "A-6."

Mr. O'BRIEN.—Objected to as incompetent, irrelevant and immaterial, and also as not having been properly identified.

(Deposition of Thomas M. Norton.)

Mr. LOFTUS.—In view of counsel's last objection, based on want of identification, I will now ask him to state upon the record whether or not he was present at the time this letter was removed, and also to state whether or not the said letter has been constantly in his view since that time. This is a question to Mr. O'Brien.

Mr. O'BRIEN.—I was present at the time of the removal of the exhibit "A-6," but I can't say that I have had the exhibit constantly in view since its removal, and I will further state that I decline to go on the stand as a witness, and decline to answer any more [99] questions. If counsel wants evidence he must get it from his witnesses and not from me.

Mr. LOFTUS.—Counsel for plaintiff is requested to state any particular time when the said letter was out of his view since the time it was removed.

Mr. O'BRIEN.—Counsel for plaintiff declines to answer any more questions. I have made all the statement I care to make.

Q. Is this letter O in the same condition that it was when you originally constructed the sign, that is, so far as the metal part?

A. The metal part is the same.

Q. And the glass? A. Yes, sir.

Q. You don't know of any changes or differences?

A. No, sir; none whatever in the metal construction. The bevelled surface of the moulding is painted white instead of the original aluminum color.

(Deposition of Thomas M. Norton.)

Cross-examination.

(By Mr. O'BRIEN.)

Q. Who made that change, if you know, Mr. Norton?

A. I don't know who painted it, but the work was done for the Denver Electrical Company.

Redirect Examination.

(By Mr. LOFTUS.)

Q. Mr. Norton, how like or how different to this letter O of Defendants' Exhibit "A-6" were the letters in the signs which you constructed for the New York Floral Company and the DuBois sign, concerning which you testified yesterday?

Mr. O'BRIEN.—Objected to as not proper redirect.

A. It is the same construction all the way through.

Q. You don't note any differences in construction?

Mr. O'BRIEN.—Same objection.

A. No, sir.

Q. Did the New York Floral Company sign and the DuBois sign [100] employ the same moulding as is shown in Defendants' Exhibit "A-6"?

Mr. O'BRIEN.—Same objection. Also objected to as leading.

A. Yes, sir.

**Deposition of Archibald Mackenzie, for Defendant.
(Recalled).**

ARCHIBALD MACKENZIE, being recalled,
testified as follows:

Direct Examination.

(By Mr. LOFTUS.)

Q. Since you last testified were you present at the time Defendants' Exhibit "A-6" was removed from the sign of the Denver Electrical Company in this city? A. I was.

Q. I call your attention to this exhibit and ask you to state whether or not it is in the same condition regarding its construction as when you originally constructed the sign? A. It is.

Q. Do you note any changes whatever in construction? A. No, sir.

Q. How does this construction shown in Defendants' Exhibit "A-6" compare with the construction of the letters in the signs which you built for the New York Floral Company and Mrs. Dubois, concerning which you have previously testified.

Mr. O'BRIEN.—Objected to as leading.

A. Same construction.

Q. Any difference at all?

A. I would say not.

Q. Did those signs, namely, the New York Floral Company and the one for Mrs. Dubois, have the same kind of moulding or border which is shown in Defendants' Exhibit "A-6"?

Mr. O'BRIEN.—Objected to as leading.

A. They did.

Mr. O'BRIEN.—No cross-examination.

Mr. LOFTUS.—At this time defendants offer in evidence photostat copies of each of the following original documents taken from the records of the Board of Public Works of the city of Denver: application No. 2935 or a permit to erect a sign covering the New York Floral installation, including three sheets, to wit: front and [101] reverse sides of the application and certificate of the Electrical Inspection Department accompanying same, which the notary is requested to mark Defendants' Exhibit "A-7"; similarly photostat copies of application number 2951 for a permit to erect a sign covering the DuBois installation, consisting of three sheets as follows: front side application, reverse side of same and certificate of inspection of the Electrical Inspection Department accompanying same, which the notary is requested to mark Defendants' Exhibit "A-8"; and photostat copies of application No. 2984 for permit to erect sign covering the Denver Electrical Company installation, and consisting also of three sheets, to wit: front and back of application and certificate of inspection of Electrical Inspection Department, which the notary is requested to mark Defendants' Exhibit "A-9."

Mr. O'BRIEN.—The introduction in evidence of the Exhibits "A-7," "A-8" and "A-9" is objected to as incompetent, irrelevant and immaterial, but no objection is made on the ground that photostat copies are offered instead of the originals.

Mr. LOFTUS.—It is stipulated that the original exhibits, after being properly marked by the notary, may be kept in the custody of the attorney for defendants, subject to inspection by attorneys for plaintiff at all times, and with the understanding that they will be produced at the hearing.

Defendants' Exhibit "A-1."

ELECTRICAL INSPECTION DEPARTMENT.

City and County of Denver.

Permit No. 2894.

To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at 526-16th Street, [102] owned by NEW YORK FLORAL CO., has been inspected and approved by this department.

Inspected: Date—8-17-12.

Inspector—Oliver.

(Signed) JNO. MALM,
City Electrician,
S.

**APPLICATION FOR A PERMIT TO ERECT
SIGN.**

Denver, Colorado.

No. 2935.

To the Board of Public Works, City and County
of Denver:

Please issue to Prismatic Sign Co. subject to the authority conferred by the Rules and Regulations of the Board of Public Works a permit to erect electric sign 12 ft. long by 3 ft. wide, and 7 inches

deep from the premises occupied by New York Floral Co.

Said sign to be erected in front of premises located at 526-16th Street and not to project more than 2 feet from lot line at outermost point of sign, as more fully appears by sketch on back of this paper.

Sign to be put on top of cornice and project 2 feet from lot line.

The privilege is asked for within 7 days from date and we estimate it will probably be — months before any other sign in the same place will be required for the purpose of inspection. The work to be done subject to your rules and directions, and the general laws and ordinances of the city, and at our risk for any and all loss or damage occasioned to the City, either directly or indirectly, and the amount of any judgment thereby obtained against said city shall be conclusive evidence of our liability.

PRISMATIC SIGN CO.

By A. MACKENZIE.

O. K.—SETH BRADLEY,

President.

(Indorsed on side:)

Received of The Prismatic Sign Co. 50¢ to cover cost of permit, Aug. 19, 1912.

ALLISON STOCKER,

Treasurer.

By B.,

Deputy. [103]

Defendants' Exhibit "A-2."

ELECTRICAL INSPECTION DEPARTMENT.

City and County of Denver.

Permit No. 3259.

To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at 757 Broadway, owned by Mrs. DU BOIS, has been inspected and approved by this department.

Inspected, Date—9-3-12.

Inspector—Oliver.

(Signed) JNO. MALM,
City Electrician.
S.

**APPLICATION FOR A PERMIT TO ERECT
SIGN.**

Aug. 27, 1912.

Denver, Colorado.

No. 2951.

To the Board of Public Works, City and County
of Denver:

Please issue to Prismatic Sign Co. subject to the authority conferred by the Rules and Regulations of the Board of Public Works a permit to erect electric sign 17 ft. long by 3½ ft. wide, and 7 in. deep from the premises occupied by Mrs. DuBois.

Said sign to be erected in front of premises located at 757 Broadway street, and not to project more than 5 ft. from lot line at outermost point of sign, as more fully appears by sketch on back of this paper.

No. of lights—15. [104]

The privilege is asked for 7 days from date, and we estimate it will probably be several months before any other sign in the same place will be required for the purpose of inspection. The work to be done subject to your rules and directions, and the general laws and ordinances of the city, and at our risk for any and all loss or damage occasioned to the city, whether directly or indirectly, and the amount of any judgment thereby obtained against said city shall be conclusive evidence of our liability.

PRISMATIC SIGN CO.

By A. MACKENZIE.

O. K.—SETH BRADLEY,

President Board of Public Works.

(Indorsed on side.)

Received of Prismatic Sign Co. 50¢ to cover cost of permit, Sept. 3, 1912.

ALLISON STOCKER,

Treasurer.

By P., Deputy.

Defendants' Exhibit "A-3."

ELECTRICAL INSPECTION DEPARTMENT.

City and County of Denver.

Permit No. 3794.

To the Honorable Board of Public Works:

The electric wiring on the sign to be installed at 137-15th St., owned by DENVER ELECTRICAL

CO., has been inspected and approved by this department.

Inspected, Date—10-14-12.

Inspector—Thorn.

(Signed) JNO. MALM,
City Electrician.
S. [105]

APPLICATION FOR A PERMIT TO ERECT
SIGN.

Denver, Colo., July 31st, 1921.

No. 2984.

To the Board of Public Works, City and County of
Denver:

Please issue to Prismatic Sign Co. subject to the authority conferred by the Rules and Regulations of the Board of Public Works a permit to erect electric sign 24 ft. long by 32 inches wide, and 6 inches deep, from the premises occupied by Denver Electrical Co. Said sign to be erected in front of premises located at 137—15th Street and not to project more than 18 inches from the lot line at outermost point of sign, as more fully appears by sketch on back of this paper.

The privilege is asked for 7 days from date, and we estimate it will probably be several months before any other sign in the same place will be required for the purpose of inspection. The work to be done subject to your rules and directions, and the general laws and ordinances of the city, and at our risk for any and all loss or damage occasioned to the city, either directly or indirectly, and the amount

of any judgment thereby obtained against said city shall be conclusive evidence of our liability.

PRISMATIC SIGN CO.

G. A. MACKENZIE.

O. K.—SETH B. BRADLEY,
President.

(Indorsed on side.)

Received of Prismatic Sign Co. 50¢ to cover cost of permit, Oct. 15, 1912.

ALLISON STOCKER,
Treasurer. [106]

Defendants' Exhibit "A-5."

C. Rider

R. H. Edwards

Denver, Colo., 8-15-12, 191—.

Electric Wiring and Repairing High-
grade Gas and Electric Fixtures
Estimates Promptly Given.

Mackenzie Bros.

757 Broadway.

Debtor To

THE DENVER ELECTRICAL CO.

137 15th Street.

Phone Main 1986.

Terms: Cash

To wiring sign,

1 conduit	.....	.40	
1 ft. conduit	.....	.10	
Tape	.....	.20	
2 locknuts	.....	.05	
1 bushing	.....	.05	
Permit	.....	2.00	
Time	.....	1.50	4.30

[107]

Deposition of Paul D. Howse, for Defendant.

Thereupon defendant called PAUL D. HOWSE, who testified as follows:

My place of residence is 3223 West Adams Street, Los Angeles, California. I am 47 years old; president of the Electrical Products Corporation, manufacturers of electrical signs, located at 1128-34 West 16th Street, Los Angeles, California, since 1912. I submitted a bid for an electric sign for the White Sewing Machine Agency in Los Angeles in February or March, 1914. I fix this date by reason of the fact that I opened the factory in November, 1913, the previous year. I presented a sketch but our bid was rejected in favor of one made by C. J. Wallace, who made the sign. It was erected on an alley side of the east door on the Sixth street side of the Hollingsworth Building, at Sixth and Hill Street. I first saw this sign about May 1st, 1914, in operation. I fix the date by reason of the fact that the White people did not reply to our bid. When I came by there I saw the sign had been put up by Wallace. I was unable to find any records in the City Electrician's office concerning this sign, as the City Electrician informed me the City did not keep anything back of five years.

Q. Did you look at any other place for records under date of the installation of this sign?

A. I went to see the present White Sewing Machine Agents.

DQ. No. 19. What did you learn there?

(Deposition of Paul D. Howse.)

A. I learned that the agency had changed hands and that they had no records.

DQ. No. 20. Have you ever examined this sign closely? A. I have.

DQ. No. 21. Please describe it.

A. It is a sign reading "White" vertically, built of galvanized iron and wood; the letters are cut out and around the letters are placed a raised border with a moulding tapering inward and across the face of the letters, from the back is placed a coarse screen. [108]

DQ. No. 22. How is that screen held in place?

A. It is held in place by clips on the back of the face of the sign.

DQ. No. 23. What is the purpose of this screen?

A. To diffuse the light.

DQ. No. 24. Is that sign still in use? A. It is.

DQ. No. 25. At what address, if you know?

A. 818 South Broadway, Los Angeles.

DQ. No. 26. When did you last see it?

A. I drove by there this morning and saw it there.

DQ. No. 27. I hand you a photograph for identification which has been marked Defendants' Exhibit "A," and I ask if you recognize or can identify the device shown thereby (document handed to witness).

A. Yes, sir; that is the sign to which I referred.

DQ. No. 28. Similarly I hand you a photograph which is marked Defendants' Exhibit "B," for identification, and I ask if you can identify or recognize the device shown therein?

(Deposition of Paul D. Howse.)

A. Yes, sir; that shows a part of the letter "T," and all of the letter "E," on the sign.

DQ. No. 29. Do you remember when these photographs were taken?

A. Those photographs were taken in November, in October or November of 1920.

DQ. No. 30. By whom were they taken, if you know?

A. They were taken by Bentley, the photographer for "The Evening Herald."

By Mr. LOFTUS.—Counsel for plaintiff is informed that the White Sewing Machine Agency sign is in use on a building within four blocks from where this testimony is being taken and he is invited to accompany counsel for defendants to the location of this sign and examine the same if he so desires.

By Mr. GRIFFIN.—It is no part of the requirement of the taking of this testimony that counsel for plaintiff proceed to any [109] other place than the taking of this testimony for an examination of any witness or object.

By Mr. LOFTUS.—Plaintiff's counsel well knows that the sign is a large, bulky affair and could not well be transported to this room for the purposes of examination and cannot conveniently be offered in evidence. The two photographs identified by the witness are offered and introduced in evidence as Defendants' Exhibit "A," and Defendants' Exhibit "B," respectively, and opportunity is now given counsel for plaintiff to visit the actual

(Deposition of Paul D. Howse.)

sign for the purpose of comparing the photographs thereof and making timely objection to any inaccuracies that might be present.

By Mr. GRIFFIN.—The offer is objected to as secondary evidence, insufficiently proven of the sign in question.

DQ. No. 31. (By Mr. LOFTUS.) Were there any other electric signs of this nature erected by Wallace, in the city of Los Angeles, to your knowledge?

A. Yes, there were a number of them.

DQ. No. 32. Can you name any of them?

By Mr. GRIFFIN.—I object to the question as indefinite as to time and move to strike out any answer thereto unless the time is fixed.

DQ. No. 33. (By Mr. LOFTUS.) Now, read the question. (Question read by the reporter.)

A. With the exception of this one sign, all have been destroyed, or removed, although I know where some of them were erected during the early part of 1914.

DQ. No. 34. Where were those other signs erected?

A. One was erected on a hotel on the west side of Main street, between Fifth and Sixth streets.

By Mr. GRIFFIN.—I move that the answer be stricken out because of uncertainty as to the time when this sign was erected. I further object to any hand-made alteration of the photograph being offered in evidence.

DQ. No. 35. (By Mr. LOFTUS.) Referring, now, to photograph [110] Defendants' Exhibit "B,"

(Deposition of Paul D. Howse.)

what is the part which I have just marked with the letter "A"?

A. That is the moulding for outline of the letter, the vertical outside stroke of the letter.

DQ. No. 36. What is the part which I have just marked with the letter "B"?

A. That is the coarse screen placed behind the face of the sign.

DQ. No. 37. What is the face of the sign? Of what material is the face of the sign constructed?

A. Either black or galvanized iron.

DQ. No. 38. Are you familiar with the practice in Los Angeles and elsewhere with regard to electric signs of this type, with particular reference to sidewalk illumination?

By Mr. GRIFFIN.—That question is objected to as incompetent, irrelevant and indefinite.

A. Yes.

DQ. No. 39. What is the practice in so far as the illumination of the sidewalk is concerned?

By Mr. GRIFFIN.—That question is objected to as incompetent, irrelevant and immaterial.

A. In the city of Los Angeles, where signs illuminate from the interior, they are placed around mar-
quise or what is known as metal hanging canopies. For a number of years, the city electrician required that the bottoms be left out of the signs so as to illuminate the sidewalk from the same lamp which illuminated the sign.

DQ. No. 40. How long has this been the requirement of the city ordinance?

(Deposition of Paul D. Howse.)

By Mr. GRIFFIN.—That question is objected to as it has not been shown that any ordinance with respect to this matter is in existence. The question is further objected to as leading.

DQ. No. 41. (By Mr. LOFTUS.) Question withdrawn. To your knowledge how long has it been the practice to leave the bottom out of [111] the sign so as to illuminate the sidewalk?

By Mr. GRIFFIN.—The question is objected to as incompetent, irrelevant and immaterial and upon the further ground that it tends to prove no material issue in this case.

A. That was the requirement by the city electrician when we first started hanging signs in Los Angeles, about April of 1912, and such requirement remained in effect up until about three years ago, when we induced the city electrician to make it optional whether we should leave the bottom out or cut out part of the back out, either method obtaining the same effect, and that is still in effect.

DQ. No. 42. Are there any other cities where you do business having a similar requirement with regard to omitting the bottom from a sign so as to illuminate the sidewalk?

A. Yes, the city of Seattle.

DQ. No. 43. How long, to your knowledge, has this been the requirement in Seattle?

A. To my knowledge, it has been the requirement there for five years. Previous to that time we had not been in business in Seattle and I do not know what the requirement was, but the Seattle ordinance

(Deposition of Paul D. Howse.)

applies to all electrical signs extending over the walk, and it was optional whether we should leave the bottom out or put glass in the bottom to obtain the effect of lighting the sidewalk from the same lamp that lighted the sign.

By Mr. LOFTUS.—Direct examination closed.

Cross-examination.

(By Mr. GRIFFIN.)

Cross-Question No. 1. The moulding shown you in the White Sewing Machine patent is made of wood, is it not? A. It is.

XQ. No. 2. And you know that the principal objection to that sign is that the wood moulding breaks off and splits and warps so that it makes a very bad looking sign, do you not?

A. The wood moulding stayed in place for three years, about three years, on that sign, [112] and my impression is it was knocked off from a blow on the face of the sign. It was formerly hung in an alley way opposite Jevne's store, where a great many deliveries are made, and we were asked once to replace that moulding, but we were not given the job.

XQ. No. 3. And you know, that on new electric signs made at the present time, that the electric departments do not allow the use of wood in the construction of such signs, do you not?

A. The electric departments in Los Angeles will allow the use of wood removed a certain distance from the wiring, but not on the interior signs.

(Deposition of Paul D. Howse.)

XQ. No. 4. But that is an objection to a sign, having any wood about it?

A. My personal opinion is that a sign should not have any wood about it.

XQ. No. 5. How do you fix this date of the construction of this sign as May, 1914?

A. I had opened a factory in November of 1913, and I started out soliciting myself; when I got the factory going, I started out the week after the first of the year, and handled the down town territory for a period of about five months, and it was during that time that this sign was put up. Along in June of 1914, I discontinued the down town territory as a sales field, so that I know it was previous to the first of June.

XQ. No. 6. Mr. Tucker, who is also down as a witness to testify at this hearing, is employed in your company?

A. He is, at the present time; yes, sir; but he was not at that time.

XQ. No. 7. You have expressed very serious doubt to many people about this patent of Hotchner's regarding this sign with raised metal moulding, have you not? A. I have not.

XQ. No. 8. Have you not spoken to some one connected with the Greenwood Advertising Company concerning the patent?

A. Oh, it is possible that I may have had a conversation with someone about it. [113]

XQ. No. 9. Didn't someone solicit you to sell for the Hotchner signs?

(Deposition of Paul D. Howse.)

A. No, sir; they did not.

XQ. No. 10. Did they not show them to you, a salesman?

A. No, sir. I never saw it until—that particular sign—until one of them was put up.

XQ. No. 11. Now, with respect to these signs that you say were built with the bottom left open, can you place any such sign? A. Yes.

XQ. No. 12. At the present time? A. Yes.

XQ. No. 13. Where?

A. There is one on a bank marquise at the opposite end of this block, that is, on Fourth and Main, on the Fourth street side. There is the "Roma Cafe" on Hill street; there are others around town but I do not have them in mind right now.

XQ. No. 14. There are signs on marquise?

A. Yes.

XQ. No. 15. As distinguished from a swinging electrical sign?

A. We have no swinging signs down here. Our projection is a permanent fixture.

XQ. No. 16. And this illumination was simply from the edge of the marquise and not from the bottom of an electric sign?

A. No. It was from the bottom of the electric sign. The electric signs are planted on the marquise; that is the way the constructed marquise extend; then the signs are fastened on the side.

XQ. No. 17. Where is this "Roma Cafe"?

A. That is about No. 618 South Hill Street.

XQ. No. 18. 618?

(Deposition of Paul D. Howse.)

A. Well, about that number, yes.

XQ. No. 19. And when were those signs put up?

A. That sign was put up about two years ago.

XQ. No. 20. When was the other one—

A. (Interrupting.) The bank sign was put up about six years ago.

XQ. No. 21. Any other signs like that?

A. Yes, there is a number of them; quite a few have been put up and then taken down afterwards.
[114]

XQ. No. 22. You do not know of any sign at the present time that was put up prior to 1914, of that character?

A. Well, it is very hard to fix the date. There are lots of them, but I can't recall them right now. We have frequently left the bottoms out of signs for that purpose, both on marquise and otherwise.

XQ. No. 23. But you cannot give any example of any such sign put up prior to 1914, at the present time?

A. I haven't any in mind unless it is that bank sign I spoke of was put up previous to that time.

XQ. No. 24. But you don't know that it was put up prior to that time?

A. No, I am not sure. My impression was it was put up after 1914.

By Mr. GRIFFIN.—That is all.

Redirect Examination.

(By Mr. LOFTUS.)

Redirect Question No. 44. Where is Mr. Wallace now, if you know? A. I do not know.

(Deposition of Paul D. Howse.)

RDQ. No. 45. When did you last see him?

A. About 1914.

By Mr. LOFTUS.—I have nothing further.

Recross-examination.

(By Mr. GRIFFIN.)

Recross-Question No. 25. You are the agent for the Flex Lume Letters?

A. Why, I do not know whether you would call it agent or not; the Electrical Products Corporation owns the patent as applied to territory west of the rocky mountains.

RXQ. No. 26. And you lease or otherwise dispose of territory for the northern part of the state and districts— A. (Interrupting.) Yes. [115]

RXQ. No. 27. To the Federal Electric Sign System? A. Yes.

RXQ. No. 28. And that particular type of letter is the competitor of the type of letter that is referred to in this—

A. (Interrupting.) I don't regard it as such.

RXQ. No. 29. Nevertheless, it is a competitor and is applied in exactly the same manner as the letters and for the same sign purposes, is it not?

A. Read the question again, please. (Question read by the reporter.) Well, that would depend on the personal viewpoint.

RXQ. No. 30. Well, we will put it this way: If you found a man with a sketch of a sign which was to have the Hotchner letters installed in it, you would not hesitate to tell him that your letters, the

(Deposition of J. E. Tucker.)

Flex Lume letters would make a better sign for that same purpose, would you?

By Mr. LOFTUS.—That is objected to as incompetent, irrelevant and immaterial, calling for the opinion of the witness.

A. The letters are wholly different. On the Hotchner letters you speak of, they raise the bead; on our letters, the letter itself is raised; the stroke of the Hotchner letter is much wider than the stroke of the Flex Lume letter.

RXQ. No. 31. I understand that thoroughly; that is not what I am asking you. I am asking you if you would not consider that if you found a man endeavoring to buy one of the Hotchner signs with the raised border letter, if you would not undertake to sell him for the same purpose a sign with the Flex Lume letter? A. Yes.

Deposition of J. E. Tucker, for Defendant.

Defendant thereupon called J. E. TUCKER, who testified as follows:

My name is J. E. Tucker, Senior; age 54 years; local address, Los Angeles, California. I am connected with the Electrical Products Corporation in the Sales Department. It is a manufacturer [116] of electrical signs and accessories. I have been in the electrical sign business since January, 1913, connected with the Greenwood Advertising Company. I was in the position of Vice-President and General Manager of that company and handling the sales. I solicited the White Sewing Machine

(Deposition of J. E. Tucker.)

Agency of Los Angeles for an electrical sign in the year 1914. I cannot state positively the month, but it must have been by the middle of the year. I did not succeed in selling a sign to them. I afterward saw a sign—an electrical sign—on their building, which I have seen since many times. It consists of a vertical sign, the letters having a wire mesh with something of a raised edge to it—something of a wooden construction, perhaps, in appearance, with a bold finish. The front of the sign was made of metal with a smooth surface.

DQ. No. 16. What was the purpose of the mesh, as you mentioned?

A. I can't really see any purpose, only to diffuse the light.

DQ. No. 17. How was that mesh held in place?

A. I am not positive of that but I think it was soldered.

DQ. No. 18. Have you since seen that sign?

A. Yes.

DQ. No. 19. When did you last see it?

A. I saw it a great many times at this present location.

DQ. No. 20. Where is it located at the present time, if you know?

A. To the best of my recollection, it is on Broadway, between Eighth and Ninth.

DQ. No. 21. I show you a photograph, which has been offered here in evidence as Defendants' Exhibit "A," and I ask if you recognize the device pictured therein? A. Yes.

(Deposition of J. E. Tucker.)

DQ. No. 22. Please tell us what that is?

A. That is the sign that we referred to.

DQ. No. 23. I show you another photograph marked Defendants' Exhibit "B," and I ask you if you recognize the device pictured therein?

A. Yes, that is the type of letter that I referred to. [117]

DQ. No. 24. Who, if you know, erected that sign?

A. I positively do not know who erected it; I know who I was told was manufacturing it at that time; whether he erected it or not is a question in my mind.

By Mr. LOFTUS.—I think that is all. The direct examination is through.

Cross-examination.

(By Mr. GRIFFIN.)

Cross-Question No. 1. You have spoken of the raised moulding on this sign; you know, of course, that that raised moulding was made of wood?

A. It has that appearance, yes.

XQ. No. 2. And that wood very easily cracks and breaks and warps and falls off a sign as illustrated by the photograph Defendants' Exhibit "B"?

A. Why, I would judge that it would, in time, crack and warp, or something of that nature.

XQ. No. 3. And you don't know exactly when this sign was installed?

A. Not the exact month, I could not tell you.

By Mr. GRIFFIN.—I guess that is all.

By Mr. LOFTUS.—Nothing further.

Deposition of C. E. Heft, for Defendant.

C. E. HEFT, a witness, being called upon behalf of the defendant, testified as follows:

My name is C. E. Heft. I am 39 years of age. I reside at 480 East Mill Street, Portland, Oregon, and work for the Portland Elevator Co., Portland, Oregon. I am Vice-President of that company. I have charge of the outside work, and have been with that company a little over ten years, since October, 1911. [118] Prior to October, 1911, I was employed with the Oregon Hotel Company a little over two and a half years. I left there September 15, 1911. I have seen the monthly time book of the Hotel Oregon. I find my signature there in lots of places, especially on pages 201 and 202, showing that I was paid up to the 16th of September, 1911. John Anderson succeeded to my place as Chief Engineer with the Oregon Hotel Company. I quit September 16, 1911.

Q. And you were succeeded on that day by Mr. Anderson? A. Yes.

Q. H. Anderson, it says here?

A. Yes, I think his name is Hans.

Q. He took your position as chief engineer of the Oregon Hotel Company? A. Yes.

The book identified by the witness was thereupon offered in evidence by counsel for the defendants and the same was marked Defendants' Exhibit "AA," and it is returned herewith and made a part hereof.

Mr. PECK.—I desire to call particular attention to pages 201 and 202 of this exhibit, which are the

(Deposition of C. E. Heft.)

pages which have been referred to by the witness.

Q. Were you chief engineer of the Oregon Hotel Company and employed by the Oregon Hotel Company after September 11, 1911? A. No.

Q. And your next business was with this elevator company? A. Yes.

Q. Have you any documentary evidence which shows when you went into this mill and elevator business?

A. I have merely a little contract here which was drawn up among ourselves which shows the date on which I bought my stock, which was October 2, 1911. Between the time I left the Oregon Hotel, which was September 16th, and this date, October 2d, I was not working.

Q. Then started in to working for the Portland Elevator Company on [119] October 2, 1911?

A. Yes, I started in with the Portland Elevator Company on October 2, 1911.

Mr. PECK.—The witness does not wish to part with this paper which he has handed me, and we wish to submit the same to counsel as an exhibit and ask if a copy may be made by the notary public and certified to as such and substituted for the original as an exhibit in this case and marked.

Mr. GRIFFIN.—There is no objection to that. Thereupon the paper identified by the witness was offered in evidence by counsel for defendants and the same was copied and certified by the notary public, and marked Defendants' Exhibit "BB," and it is hereto attached and returned herewith. No objection was made thereto.

(Deposition of C. E. Heft.)

Q. Mr. Heft while you were chief engineer of the Oregon Hotel Company prior to September 16th, 1911, did you have occasion to build a hotel sign for that company? A. Yes, I built it.

Q. Where was that sign installed?

A. That sign was hung on the corner of the hotel building facing what was then Seventh and Stark Streets, it is now Broadway and Stark Street, Seventh Street having been changed to Broadway.

Q. And the Oregon Hotel building stands on what corner?

A. On the northwest corner of Broadway and Stark Streets in Portland, Oregon.

Q. And the sign you refer to was made and hung on the southeast corner of that building? [120]

A. Yes.

Q. How was it facing?

A. Facing the intersection of the street.

Q. When did you hang that sign there?

A. As to the exact date I could not say. I know that the sign was completed and hung just before I left working for the Oregon Hotel Company. I would say it was hung and lighted for the first time between the 10th and the 15th of September, 1911.

Q. How do you fix that time?

A. Well, at the time we were doing the last work on the sign in regard to hanging and connecting it, Mr. Anderson, the man who is now the engineer for that hotel was sent to me with a view of getting the position I had and that I was leaving. I remember when he came in to see me that I left my work

(Deposition of C. E. Heft.)

on the sign and taking him in and introducing him to Mr. Wright and Mr. Dickinson, and that was between the 13th and 15th of September, 1911, as near as I can remember, because he was there only a day or two previous to his starting to work for the company.

Q. You were working on this sign when Mr. Anderson was employed to succeed you?

A. We were working on the sign, just completing it and getting it ready to hang, and just completed it and had it hung and lighted just before he started to working for the hotel.

Q. Who built that sign? A. I built it.

Q. State in a general way the construction of the sign.

A. Well, the sign is built of galvanized iron throughout. It is built in sections with letters on three sides mitered in on the back to fit the shape of the building. The letters are built up of channel [121] sections throwing the letter out from the surface. I don't remember the exact dimensions of these, but that leaves a wide space around the edge of the letter about an inch which are gilded with glass back of the raised part of the letter. The lamps were hung in just back of the letters allowing the lights to shine through and across the glass.

Q. Were the letters built separate and apart from the galvanized sides?

A. Each letter was built independently and fastened on.

Q. How were they fastened on?

(Deposition of C. E. Heft.)

A. As I remember it they were fastened on with stove bolts and soldered.

Q. How were these letters made?

A. The letters were simply made out of galvanized iron, each section of the letter being cut from patterns that were laid out so that the corners were mitered together and pieces were bolted on from sheet metal leaving a flange at the bottom raised up from the surface of the sign something like an inch and a half and then turned back somewhere about one inch with the edge turned under for reinforcement and each corner where the edges came together was joined and soldered together.

Q. What was the approximate width of the flange at the bottom?

A. It was between three-quarters and one inch, as I remember it.

Q. Was not the flange at the bottom wider than the flange at the top?

A. It might have been. [122]

Q. The metal came out at right angles from the flange at the bottom about an inch and a half, do you think? A. Something like that.

Q. And turned back in the same direction as the flange at the bottom about an inch? A. Yes.

Q. And turned up for the purpose of reinforcement? A. Yes.

Q. And every separate section of each letter was made in that same way? A. Yes.

Q. And the sections joined together?

A. Each section was joined at the corner making

(Deposition of C. E. Heft.)

a complete letter independently of its back-ground.

Q. How was the face of the flange?

A. The face was open with a gilded band, of gold or bronze, to stand out very brilliant as the light strikes it, I suppose for daylight.

Q. How was the glass fastened that was placed behind the letter in connection with the letter and the lights?

A. The letters each had a separate glass and they were fastened in with little metal clips.

Q. How were these metal clips fastened to the frame work?

A. I am not sure as to the exact method of fastening them, but as I remember it now they were soldered.

Q. You don't remember whether they were fastened on with stove bolts or not?

A. No, I could not remember.

Q. There was a separate glass for each letter?

A. Yes.

Q. How was that glass frosted?

A. This man under whose direction this sign was built had some process by which he frosted it with a paint mixture of some sort. I am not sure what it was.

Q. Who was that man?

A. He was a painter who was at that time employed by the Oregon Hotel Company for re-decorating and repainting [123] the building and furniture; his name was Merwin, or something like that.

(Deposition of C. E. Heft.)

Q. A. L. Merwin? A. Yes.

Q. Did he have plans for this sign?

A. He furnished all the drawings and gave all the instructions for making it.

Q. Where is this man Merwin now?

A. I don't know.

Q. How long has it been since you have seen him?

A. I have not seen him for seven years.

Q. Have you heard from him during that time?

A. No, I have never been in communication with him at any time.

Q. Where are these original plans?

A. No doubt they are in his possession. He had all the plans and working models of this sign in his possession at the time we built it.

Q. I hand you what purports to be a photograph of a sign and ask you if you recognize that photograph? A. I do.

Q. What is it?

A. It is a photograph of that sign we have been talking about which is on the corner of the Oregon Hotel building.

Q. Is that a correct representation of that sign?

A. It is.

The photograph identified by the witness was thereupon offered in evidence by counsel for the defendants and the same was marked Defendants' Exhibit "CC," and the same is returned herewith and made a part of this deposition.

Mr. PECK.—I now submit this photograph, Defendants' Exhibit "CC" to counsel and ask if there

(Deposition of C. E. Heft.)

is any objection to the proof of the photograph?

Mr. GRIFFIN.—There will be no objection to the photograph if it is also identified by the other witnesses called.

Mr. PECK.—I will also have it identified by the other witnesses I call. And we also wish the record to show that [124] before offering this photograph we have referred counsel to the particular sign in place for his examination.

Q. I also hand you what purports to be an enlargement of the upper portion of the sign shown on Defendants' Exhibit "CC" and ask you if you recognize that? A. I do.

Q. What is that a photograph of?

A. That is a photograph of the same sign that I built and that was placed on the corner of the Oregon Hotel building and is the same sign which I have been testifying about.

The last photograph identified by the witness was thereupon offered in evidence by counsel for the defendants and the same was marked Defendants' Exhibit "DD," and the same is returned herewith and made a part of this deposition.

Mr. GRIFFIN.—I will make the same statement in respect to this exhibit that I did in respect to the other; that there will be no objection to the proof if it is identified by the other witnesses.

Mr. PECK.—And we will engage to have it as well as the other identified by the other witnesses. We wish the record to show that our reason for asking counsel at this time as to any possible ob-

(Deposition of C. E. Heft.)

jection is due to the fact that the photographer who took the pictures is here in town and can be called as a witness at this time, and the reason that he has not been called, and the reason that counsel has not been served with notice as to his deposition is simply to save time and expense to both parties.

Mr. GRIFFIN.—I understand that and there will be no objection on that account.

Q. Has this sign concerning which you have testified as having been hung by you in September, 1911, been hanging in position at the same place at all times since that date up to the present time? [125]

A. Yes.

Q. Is it just the same now as it was when you hung it?

A. I can see no change in it whatever.

Q. Have you noticed it from time to time?

A. Yes.

Q. You have lived here in Portland all the time?

A. Yes and I have probably looked at it a thousand times since I hung it up.

Q. And it is hanging there to-day?

A. Yes, it is there as far as I know. I have not seen it to-day, but I imagine it is there.

Cross-examination of Mr. HEFT by Mr. GRIFFIN.

Q. This sign, "Oregon Hotel," is what is known as a channel letter sign with outside flanges, is it not? A. I suppose that would be a name for it.

Q. And the only difference between this sign and the ordinary channel sign with the lights in the channel is that you put glass in back of the channel

(Deposition of C. E. Heft.)

and put the lights in that section?

A. That would be one difference. A sign could be built the same as this with the lights inserted in the groove between the channel.

Q. And these flanges that form the sides of the channel are the same shape of metal with the outside flanges bent out of this same shape of metal to produce a flange about an inch wide? A. Yes.

Q. Were these flanges made from the body of that metal or were they separate pieces?

A. The completed letter is a separate piece of metal independent of the body.

Q. And made separate from the body and secured thereto after the openings have been cut in the body?

A. Yes.

Q. Are you engaged in any way in the installation of electric signs? A. No, sir.

Q. Or have anything to do with electric sign industry? A. No. [126]

Q. Have you ever installed any other electric signs since the time you installed this one?

A. No.

Q. Are you familiar with the sign on the Artisan's building in the next block below the Oregon Hotel? A. I am not.

Defendants' Exhibit "BB."

February 5, 1921.

Notary Public for Oregon.

"Factory Phone Main 1537.

(Member of the)

(United Metal Trades)

(Association of the)

(Pacific Coast.)

PORTLAND ELEVATOR CO.

5 and 7 North First Street.

Passenger and Freight Elevators.

Machinists.

Electricians.

Millwrights.

Portland, Oregon, Oct. 2nd, 1911.

Agreement between Chas. Heft and H. W. Johnson, A. W. Grover and A. L. Enos. In consideration of six (6) shares of the Capital Stock of the Portland Elevator Company, which A. W. Grover, H. W. Johnson and A. L. Enos, the only stockholders of the Company agree to sell to him, the said Chas. Heft agrees to pay to the three people above mentioned the sum of \$600.00 in payments as follows:

\$350.00 cash and \$50.00 per month until same is paid for in full.

Upon payment of the total amount, stock certifi-

cates will be delivered to him and recorded upon the books of the Company.

(Signed) A. L. ENOS.

(Signed) C. E. HEFT.

(Signed) A. W. GROVER.

(Signed) H. W. JOHNSON.

In case of the failure to make payments as above specified the stock still unpaid for shall revert to the original holders." [127]

THIS CERTIFIES that the above and foregoing is a true, correct and complete copy of the paper identified by the witness and offered as an exhibit in this case, this copy to be substituted therefor.

Notary Public for Oregon.

My commission expires May 12, 1924.

Deposition of H. C. Anderson, for Defendant.

H. C. ANDERSON, called upon behalf of defendant, testified as follows:

My name is H. C. Anderson. Age, 49. Chief Engineer, Oregon Hotel. Residence, 1117 Arnold Street, Portland, Oregon. I have been Chief Engineer of the Oregon Hotel Co. since September 15, 1911. I recognize the book marked Defendant's Exhibit "AA." It is the book we signed when we got our checks. My name appears on Page 201. I succeeded Charles Heft in that position. I recognize Defendant's Exhibit "CC" as a photograph of the corner of the Oregon Hotel, six stories up, showing the sign on the corner. It is a true representation of the sign.

(Deposition of H. C. Anderson.)

Q. How long has that sign been in place there on that corner?

A. That was put on the corner there between the first of September and along about the middle of September, 1911.

Q. How do you fix that date?

A. I applied for the position when I heard Mr. Heft was going to leave. I called in and made application and I went down in the engine-room afterwards and Mr. Heft was showing me a sign he was just finishing up. I went away and did not hear anything more from them after I put in my application until I came along there about the 10th or the 11th of September, and they were putting this sign up then. Mr. Heft asked me then if I had seen Mr. Dickinson [128] or Mr. Wright and I said no, I have not. He said they had been trying to locate me, and that they would want me to go to work right away and I went in and saw Mr. Wright and he engaged me.

Q. They were putting the sign up that day?

A. Yes, and the sign was up and going when I started to work a few days after that on the 15th.

Q. Has it been up there in place at all times since? A. Yes.

Q. And not changed? A. No.

Q. I will show you Defendants' Exhibit "DD" and ask you what that is?

A. That is a part of that same sign.

Q. Is that a true representation of that sign?

A. Yes it is.

(Deposition of H. C. Anderson.)

Q. You had nothing to do with the making of that sign, did you, Mr. Anderson?

A. No, it was completed and up there when I went to work.

Q. Have you ever had anything to do with renewing the lights in it?

A. I did not renew the lights. I think they have carbon lights put in. I think new lights were put in when we started the new hotel and started putting the sign across the street.

Cross-examination by Mr. GRIFFIN.

Q. Are you familiar with the sign on the Artisan's building on the next block?

A. I have not noticed that.

Deposition of J. C. Zanker, for Defendant.

J. C. ZANCKER, a witness produced upon behalf of defendants, being duly sworn, testified as follows:

My name is J. C. Zanker; age 36 years; residence, Seattle, Washington, and I am the Northwest manager for the Federal Electric Company. I have been in that position about five years, having been in charge of the office in Portland, Oregon, until about a year ago, and since then at Seattle. I have been connected with [129] the electric sign business with Forster & Kleiser as a salesman in 1908 and 1909. I was then in business for myself and then manufactured signs. I have always been able to draw sufficient plans to manu-

(Deposition of J. C. Zancker.)

facture and design electric signs. I have designed electric signs ever since I have been in the business, some twelve or thirteen years. I have made drawings and sketches for electric signs. Defendants' Exhibit "CC" is a photograph of the electric sign on the corner of the Oregon Hotel in Portland, Oregon. It is a true representation of the sign. I saw it yesterday. This sign was up when I was with Foster & Kleiser, and there is a record of the time when I quit working for them.

Q. Did you know about this sign at that time; when you were working for Foster and Kleiser?

A. Yes, I did.

Q. Is there any way you can identify that date or time that was?

A. The reason I remember so distinctly about it is because it was in my territory at that time and I was working for Foster and Kleiser and we were naturally a little bit peeved because we did not get the work of putting the sign up as that was the business we were doing, and I think a man by the name of Miller had something to do with it; he was with a construction gang at that time, and I think he is with Foster and Kleiser now. Offhand I cannot fix the date.

Q. Is there no way you can fix the date?

A. I have no record to which I can refer that will give you the absolute date.

Q. You know it was during the time you were working for Foster and Kleiser here in Portland?

A. Yes. I started to work for them along in

(Deposition of J. C. Zancker.)

1908 or 1909 and was with them for about five years.

Q. Then you would know that it was between 1908 and 1914? A. Yes, I know that. [130]

Q. Has the same sign been in the same place at all times since then? A. Yes, it has.

Q. And is exhibit "CC" a fair representation of that sign? A. It is.

Q. I hand you Defendants' Exhibit "DD" in this case and ask you what that is?

A. This is an enlarged photograph from the smaller one marked Defendants' Exhibit "CC," showing the top half of the sign only.

Q. Did you cause these photographs to be taken?

A. Yes.

Q. When was this enlargement made, Defendants' Exhibit "DD"?

A. On Wednesday of this week (February 2, 1921).

Q. Is Defendants' Exhibit "DD" a fair representation of the portion of the sign as the same is in place? A. It is.

Q. When was the original photograph made, Defendants' Exhibit "CC"?

A. About two months ago.

Q. And you caused that to be taken? A. Yes.

Q. Have you examined the sign recently with reference to its mechanical aspects? A. Yes.

Q. When?

A. I did that on Wednesday of this week.

Q. How did you examine the sign?

(Deposition of J. C. Zancker.)

A. I had a man bring a ladder down there and I went up on the ladder and took measurements, etc.

Q. How high is this sign?

A. About 23 feet and 9 inches.

Q. What is the construction of it?

A. Galvanized iron and glass.

Q. What is the shape?

A. What I would call a box vertical sign.

Q. What is the width of the sides of the sign?

A. Approximately 21 inches for the sides and approximately 23 inches for the face.

Q. Have you made a rough sketch of the sign?

A. Yes.

Q. Have you brought it with you?

A. I have. This is it.

Q. Was this drawing made from measurements?

A. Yes.

Q. And from measurements made by you?

A. Yes. [131]

Q. Is it drawn to scale? A. It is.

Mr. GRIFFIN.—I don't want to object to it and I think he could explain it. It does not seem to be correct.

The WITNESS.—I have drawn this to show the three sides on a flat surface. Just as if I had opened it up and laid the three sides down flat instead of making three drawings.

Q. As I understand you wanted to show three sides on one drawing? A. Yes.

Q. And it would be impossible to show three sides from one perspective in that way and so you

(Deposition of J. C. Zancker.)

opened it out in that way on the drawing?

A. Yes.

Q. This is drawn to scale? A. Yes.

Q. One foot to the inch? A. Yes.

Q. You have shown here a center letter H on this drawing in detail; please explain why you made it that way?

A. The way this letter is constructed?

Q. Yes, in accordance with your drawing.

A. This letter H is taken out of the middle of the design from the word "Hotel"; it has a raised channel border around the letter; the flange on the channel is about one inch wide; the channel is one and three-eighths deep; with an opening on the face of two inches. This opening is covered with glass frosted with white paint on the back. Each of the letters are made the same way as the center letter H on the drawing.

Q. You have only drawn one letter out complete?

A. Yes.

The sketch identified by the witness was there-upon offered in evidence by counsel for defendants and the same was marked Defendants' Exhibit "EE," and the same is returned herewith and made a part of this deposition.

Q. Did you make any sketch of the interior mechanism of the sign. A. Yes. [132]

Q. Have you it here?

A. I have it. This is it.

The sketch identified by the witness was there-upon offered in evidence by counsel for the defend-

(Deposition of J. C. Zancker.)

ants and the same was marked Defendants' Exhibit "FF" and the same is returned herewith and made a part of this deposition.

Q. Explain figure 1 of Defendants' Exhibit "FF"?

A. Figure 1 shows the way the lighting is arranged behind the letters. The socket is fastened on to a brace. This brace has two holes in it with a cable running down through the holes securely fastened, permanently fastened to one side leaving the other side loose, with this cable passing over a pulley at the top so as to lower and raise the lamps for changing the globes.

Q. As I understand by disconnecting the wires on the battery of lights all of the battery of lights can be dropped down by means of the cable from the pulley at the top? A. Yes.

Q. That was for what purpose?

A. That was for the purpose of illuminating the sign.

Q. What does Figure 2 represent?

A. Figure 2 shows one of the letters as to the glass and shows how the glass is fastened in the sign, and each letter is made the same way.

Q. Has each letter a separate glass? A. Yes.

Q. And each glass frosted as you have described in your testimony? A. Yes.

Q. What is Figure 3?

A. Figure 3 shows the bottom and top construction for the frame binding the sign together.

Q. What are these angle bars on the sides?

(Deposition of J. C. Zancker.)

A. These angle bars are used to help hold the glass in position.

Q. And also braces for the purpose of strengthening the sides and holding the sides in place?

A. Yes.

Q. What has been your observation and your experience in the sign [133] business with reference to the practice of illuminating the sidewalks and streets from electric signs placed upon buildings?

Mr. GRIFFIN.—The question is objected to unless the time is definitely stated.

Mr. PECK.—If anything develops I will connect up the time.

A. On all interior lighted signs in the city of Seattle,—there was an order that went into effect along about 1909 that all signs had to be left open on the bottom so that the light from the inside of the sign would reflect down onto the sidewalk to help light up the streets.

Q. Has that order been in force ever since 1909 in Seattle?

A. It has been in effect and we had to follow it until here recently and they are not living up to it now.

Q. What about the bottom construction of this particular sign on the Oregon Hotel building; was that open, or otherwise?

A. The bottom of that sign was left open.

Q. Have you any particular signs in mind directed to any particular time and place where the

(Deposition of J. C. Zancker.)

bottom has been left open for the purpose of street illumination?

A. There is the O. E. Evans sign in Seattle on Second Avenue in front of the O. E. Evans clothing store. And the sign in front of the King Brothers clothing store on Second Avenue near Seneca Street in Seattle which have the bottoms left open.

Q. Do you know when either of these signs were put up?

A. Yes, the King Bros. sign was put up in 1917.

Q. Have you in mind any particular signs anywhere which were up prior to October, 1912, which had the bottoms open for the purpose of illuminating the street?

A. The Seattle Oyster House sign on Pine Street between First and Second in Seattle, Washington.
[134]

Q. When was that erected?

A. Prior to 1912.

Q. Is that sign still up?

A. No, sir, it was taken out a year ago last November.

Mr. GRIFFIN.—I move that all reference to the King Bros. sign be stricken out of the record because of the fact the witness says the sign was put up three years after the patent application was applied for.

Q. Have you at this time any other signs in mind?

A. I don't remember any others.

Q. What was the construction of the Seattle Oyster House with reference to illuminating the street?

(Deposition of J. C. Zancker.)

A. That had the bottom left open. The letters were of flat opal glass, and the sign was of galvanized iron construction illuminated from the interior.

Q. How was the street illuminated?

A. Through the reflection of the light from the interior reflecting down on the sidewalk through the open bottom of the sign.

Q. The bottom of the sign was left open?

A. The bottom of the sign was left open.

Cross-examination of Mr. ZANCKER by
Mr. GRIFFIN.

Q. The company you are working for is either a branch or otherwise directly connected with the defendant corporation in this case? A. Yes.

Q. And you are engaged in selling a sign, in addition to the sign claimed to be an infringement in this case, known as the Flexlume sign, are you not?

A. We use a letter that is called Silveray embossed letter manufactured by the Federal Electric Co. in manufacturing some of our signs. [135]

Q. And these signs with that letter come in direct competition with the letters and construction used in the sign in suit? A. Yes.

Q. Are you familiar with the letters known as the Hotchner illuminated or Novelty illuminated letters, are you not? A. Yes.

Q. You have seen signs made with those letters?

A. Yes.

Q. The sign in question reading "Oregon Hotel" does not at all appear the same as the Novelty

(Deposition of J. C. Zancker.)

letters would appear in such a sign, does it?

A. Yes, I would say they are of the same construction and have the same appearance.

Q. That is, you want the Court to believe that a channel letter with an outstanding flange in front of the sign body and parallel to the sign body has the same appearance as the Novelty letters which show a raised moulding adjacent to the edges of the character letters and which have no flange parallel to the body spaced away from the body of the sign; is that what you mean?

A. Yes, it has the same appearance.

Q. You mean to say that a letter having a flat flange spaced away from the body of the letter appears the same as the letter without such flat flange? A. Yes.

Q. You recognize, of course, the mechanical difference between the two letters, do you not? That is, in the "Hotel Oregon" sign there is a small or channel-like structure with flat flanges on the outer edges of the channels, while in the so-called Hotchner letters, the subject matter of one of the patents in suit here, the edges of the letter characters are provided with mouldings of an entirely different kind from that?

A. Both the Hotchner letters and the letters in the Oregon Hotel sign are of the channel type with raised border effect around them.

Q. You recognize no mechanical difference between the two things?

A. They both have the same effect. [136]

(Deposition of J. C. Zancker.)

Q. That is not what I am asking you, Mr. Zancker. Do you or do you not recognize the mechanical difference between the two constructions? A. No.

Q. You think they are both of the same mechanical construction?

A. I consider they are of the same appearance.

Q. Do you or do you not consider that they are of the same mechanical construction; the one having a channel with flanges on the outer edges of the channel parallel to the body of the sign spaced away from the body and the other having a moulding frame over the body of the sign at the edges of the letter characters?

A. Yes, I would think they would have the same mechanical construction and appearance.

Q. Then you consider a letter with a flange spaced away from the body of the sign and parallel thereto the same thing as a letter not having a flange spaced away from the body of the sign?

A. I would say that the letters that you have referred to as your Hotchner letters and the letter in question on the "Oregon Hotel" sign would have the same appearance, yes.

Q. But that is not my question; I ask you if you recognize the mechanical difference?

A. No, I do not recognize any mechanical difference.

Q. This O. E. Evans sign that you spoke of in your direct examination which is in Seattle, Washington, was installed subsequent to 1914, was it not?

A. It was installed three or four months ago.

(Deposition of J. C. Zancker.)

Q. About this order in Seattle for leaving signs open, was that a general order, an ordinance or regulation, or made in some form or record that could be obtainable or ascertainable?

A. That was an order that had to be followed out in the department of streets and sewers for the construction of signs. [137]

Q. Was it a verbal order given in that department?

A. I would not say whether it was a verbal order or a written order. It was given to us verbally and had to be complied with, otherwise they would not give us a permit.

Q. You never installed any signs in compliance with that order prior to 1914, did you? A. No.

Q. And your reference to the Seattle Oyster House sign which you said was left open, but which does not now exist; have you any idea where that is now?

A. That was rebuilt and used on his other store.

Q. You say it was erected prior to 1912?

A. Yes.

Q. How do you know it was?

A. The proprietor of the store told me it was.

Q. That would be a matter purely of hearsay with you?

A. All I know about it is what he told me. I have his word for it.

Q. Of your own knowledge you know nothing about the erection of that sign?

A. I could not swear that the sign was erected prior to 1912 only by his saying it was.

Deposition of Archibald Mackenzie, for Defendant.

Thereupon the defendant called ARCHIBALD MACKENZIE, who testified as follows:

My name is Archibald Mackenzie. I reside at 1290 Bellaire Street, Denver, Colorado. My present occupation is painting and decorating. I have been engaged in that occupation for about 26 to 28 years. I am now 42. I have constructed and erected electric signs in Denver from 1910, about five years; almost exclusively in the electric sign business at that time. I was connected with the Prismatic Sign Company as one of the copartners. The other partner was Thomas M. Norton. We first opened a shop at 1808 Arapahoe Street. We then went to 757 Broadway, and then to Spear [138] Boulevard and California; 621 B. St. they called it. We specialized on a sign we called the Prismatic sign. We built all kinds of electric signs. The Prismatic sign was a sign with a metal face, an opening cut out, and a rib glass placed over the opening to catch the rays of light. We bent up a flange rim, flaring to the inside, fitted with a letter.

The sign was illuminated with electric bulbs inside of the box back of the letters. It was not an outward-flaring sign.

Q. Approximately how many of such signs did you construct and erect during the existence of the Prismatic Sign Company?

Mr. GRIFFIN.—The question is objected to unless it is shown that the signs erected were prior to October, 1912.

(Deposition of Archibald Mackenzie.)

Mr. LOFTUS.—Go ahead and state approximately how many of that type of signs your company put out during the existence of the company.

A. I should say not over a dozen up to 1912. From 1911 until it went out of business it put up in the neighborhood of 75 or 80. I can make a cross-section showing one of the letters of the Prismatic sign. This is a rough sketch showing the moulding, with the glass inside, and this is the face of the letter to the outside. (The witness writes the names of the parts upon the diagram.) The metal rim was soldered on the face of the sign. It was made of galvanized iron. The glass was flat to cover the entire letter; a plain sheet of glass put in back of the letter.

The sketch was offered in evidence as Defendants' Exhibit "M-A."

Mr. GRIFFIN.—The sketch is objected to as insufficient and incomplete, and as insufficiently identifying the construction of the sign, and as secondary evidence.

A. I first erected a sign of the type of the sketch for the Denver [139] Electrical Co., 137 15th Street, in December, 1911.

Q. Had you constructed and erected any of these signs in any town or city outside of Denver prior to this time? A. In Littleton, in 1912.

Mr. GRIFFIN.—I object to the question and answer unless it was shown that the sign was erected prior to October, 1912.

Mr. LOFTUS.—How many of such signs did you

(Deposition of Archibald Mackenzie.)

erect in the town of Littleton, Colorado?

A. We put two up in Denver in 1912, one in July and one in August, the same type of sign.

Q. The question was as to Littleton, Colorado.

A. Littleton was right along the same date, the same year. There were two signs, one "drugs" and one "bar."

Q. Can you state approximately when these two signs in Littleton were erected?

A. During the summer months; to the best of my recollection it was along in July or August.

Q. What year? A. 1912.

Q. How are you able to fix the date as being July or August, 1912?

A. We were not allowed to put signs in Denver of that type; that is, they were not allowed to extend out into the sidewalk; we had to keep them within a foot of the building, anything outside of an electric sign lined with electric bulbs, there was an ordinance to that effect. We were not allowed to do business at that time, up until 1912, only allowed to put a flat sign on a building.

Q. How are you able to fix the time as being July or August?

A. It was in the summer months.

Q. Any particular reason for saying it was in the summer months?

A. Well, those two signs in Littleton my brother-in-law sold; he went out in the machine, and I remember I got a horse and wagon and drove out and put them up; it was warm weather; I could

(Deposition of Archibald Mackenzie.)

not positively say just what month it was in; it was in the summer months.

Q. Do you recall the names of the merchants for whom those two [140] Littleton signs were erected?

A. The name of the man for whom the "drugs" sign was erected was named Thompson; my recollection is the Neef Brewing Co., of Denver, ordered the "bar" sign put up; I could not say positively.

Mr. GRIFFIN.—Q. The Neef Brewing Co., of Littleton?

A. Yes, sir; I could not say positively; my recollection is that it was the Neef Bros. Brewing Co.

Mr. LOFTUS.—Q. Who was the "drugs" sign for? A. For Ralph Thompson.

Mr. GRIFFIN.—Q. That was in Littleton?

A. In Littleton.

Mr. LOFTUS.—Q. I hand you a photograph containing an illustration of a sign showing the word "drugs" and ask if you can identify the same?

A. I can.

Q. Please tell us what it is.

A. Ralph Thompson's Drug Store at Littleton.

Q. In what town?

A. Littleton; this sign when hung projected from the building.

Q. Is that a sign of the type that we have just been discussing? A. It is.

Q. When was that photograph taken, if you know (handing witness photograph)?

A. Just shortly after it was hung; we always

(Deposition of Archibald Mackenzie.)

made a practice of having a photograph taken as close to the time when it was hung as possible.

Mr. LOFTUS.—Photograph identified by the witness I offer in evidence as Defendants' Exhibit "M-2."

Mr. GRIFFIN.—The photograph is objected to as insufficiently identified, and upon the further ground that there is no proof as to the date of the erection of the sign, nor any proof as to the date of the taking of the photograph.

Mr. LOFTUS.—Q. When, with reference to the Denver electrical signs which you mentioned, was this sign which is shown in [141] photograph Defendants' Exhibit "M-2" erected, before or after? A. After.

Mr. GRIFFIN.—Q. The Denver electrical sign was erected after this one?

A. They were right along, pretty close together. I was just trying to think. It is that Denver electrical sign you have reference to?

Mr. LOFTUS.—Yes.

A. (Continuing.) The Denver electrical sign, the first one we built was erected previous to that; that was in 1911.

Q. How many signs did you construct and erect for the Denver Electrical Company? A. Two.

Q. When was the first one erected?

A. In December, 1911.

Q. Do you mean that it was started at that time or finished at that time?

A. That is the time it was hung, finished.

(Deposition of Archibald Mackenzie.)

Q. How are you able to fix that date?

A. From the city records.

Q. Have you recently looked at the city records to determine the date? A. I have.

Q. And what was the date that you ascertained?

A. December, 1911; I don't just remember the day of the month.

Q. What sort of a record was this which you looked at?

A. City record permit to hang the sign.

Q. Who issues those permits?

A. The City Clerk.

Q. You stated that you erected a second sign for the Denver Electrical Co. When was it erected?

A. About six months later, to the best of my recollection.

Q. How did these two signs compare which were erected for the Denver Electrical Co.?

A. The first sign we erected for them was for an electrical show in the auditorium; after we got through with that we hung one over their door, their working place, their shop where they made the fixtures, and had us make a more elaborate one [142] later to go over their show-room.

Q. Were the two alike in construction and appearance?

A. One had a rim-letter; the first sign did not.

Q. By a rim, what do you mean?

A. A metal flaring border around the letter.

Q. Which one had the flaring metal border around the letter? A. The latter one.

(Deposition of Archibald Mackenzie.)

Q. That was erected, you say, approximately six months after the first one?

A. I say in June or July, along there, 1912.

Q. And concerning this "drugs" sign, erected in Littleton, was it erected before or after the second sign for the Denver Electrical Company was erected?

A. I think right after; they were erected close together, very close—well, to go back ten or twelve years and just tell exactly which was which, without a record of it, it is hard to do.

Q. What other signs did you construct and erect in Denver or vicinity during the years 1911 or 1912?

Mr. GRIFFIN.—The question is objected to unless it is shown that the signs in question relate to the subject matter of the patent in issue here.

Mr. LOFTUS.—Q. I will modify the question, then, to the extent of confining it to a sign of the type shown in photograph exhibit "M-2," having a flaring metal border around the outline of the letter, with a metal front and a glass placed behind this metal front and held in place in the plane of the sheet metal front.

A. One for the New York Floral Co., in July, 1912, and one for Mrs. DuBois in August, 1912.

Q. Can you give the address of those places, and state in what city or town?

A. The exact number I could not give you; I can give you the location. Mrs. DuBois' was on Broadway, between 8th and 9th. [143]

Q. In Denver?

(Deposition of Archibald Mackenzie.)

A. In Denver. The New York Floral Co. was on 16th Street, between California and Welton.

Mr. GRIFFIN.—Q. All in Denver?

A. All in Denver, yes.

Q. The New York Floral Company, where was that?

A. On 16th Street, between California and Welton.

Mr. LOFTUS.—Q. Were these two signs, viz., the Floral sign and the DuBois sign, projecting signs?

A. The New York Floral Co. sign was on top of the roof. It was a perpendicular sign, but on 16th Street they would not allow any sign to come out over two feet, therefore we had to set it back. The DuBois sign was a projecting sign, six feet out.

Q. What were the next signs of this type which you constructed and erected?

A. The May Company; it is the May Shoe and Clothing Company.

Q. When did you erect the first sign for the May Company? A. In November, 1912.

Mr. GRIFFIN.—I move that the answer of the witness be stricken out as it shows upon its face it was at a time subsequent to two years prior to the filing date of the patent that this testimony seeks to invalidate.

Mr. LOFTUS.—I wish to call opposing counsel's attention to the fact that any knowledge or use of a sign of this type prior to the filing of the Hotchner patent is sufficient to invalidate it, in the absence of

(Deposition of Archibald Mackenzie.)

any proof that Hotchner had completed his alleged invention prior to the date of the filing of his application, viz., October, 1914.

Q. Was this first sign for the May Company a projecting sign? A. No, it was an inside sign.

Q. How are you able to fix that date?

A. I got information on it before I left Denver as to the date that it was put up. [144]

Q. Do you mean that you looked up the records?

A. No, sir, I went to the assistant manager of the May Company and found out the dates. There was no other record of those. You did not need a permit to put a sign up inside of any building; there was no other record made only between the May Company and ourselves.

Q. This date which you give, November, 1912, was that the date when the sign was started or when it was completed?

A. That was the date we had a settlement after the completion, when paid for.

Mr. GRIFFIN.—I move that the answer of the witness to the previous question be stricken out, as it shows upon its face he is testifying not of his own knowledge, but upon hearsay.

The WITNESS.—I have a sworn affidavit here. (Producing paper.)

Mr. LOFTUS.—Q. Then do I understand that the first sign for the May Company was completed some time prior to November, 1912, when you received payment for it?

A. Yes, sir; finished and installed.

(Deposition of Archibald Mackenzie.)

Q. How long prior thereto?

A. It was practically at that time; there was not any lapse of time between the payment part and the completion of the sign.

Q. I show you a photograph, and call your attention particularly to the sign illustrated thereon, reading, "EXCELLO TROUSERS—FINEST ON EARTH," and ask if you can identify that sign?

A. I can.

Q. Please tell us what it is?

A. It is a sign installed in the May Company, on the second floor, the same style of sign we have made.

Q. Who installed that sign?

A. The Prismatic Sign Company.

Q. Which of these signs that you erected for the May Company is this?

A. That was the first sign we erected for them.
[145]

Q. Is that the one you stated was paid for in November, 1912? A. Yes, sir.

Mr. LOFTUS.—The photograph identified by the witness is marked Defendants' Exhibit "M-3" and offered and introduced in evidence as Defendants' Exhibit "M-3."

Mr. GRIFFIN.—The photograph is objected to as insufficiently proven; and upon the further ground that there is no showing as to the construction delineated, and the photograph being prior to two years prior to the filing date of the patent it seeks to invalidate; and upon the further ground

(Deposition of Archibald Mackenzie.)

there is no showing as to when the photograph was made.

Q. How does the sign shown in this photograph, Defendants' Exhibit "M-3," compare with the sign which you have previously described and sketched?

A. It is the same type of sign.

Q. Does it differ in any respect? A. No, sir.

Q. When was that photograph taken, if you know?

A. Right along at the same time; we followed them right up with pictures.

Q. Who took this picture (showing)?

A. A man named Dev. Regnier. [146]

Q. Taken under your instructions?

A. Yes, sir.

Q. Is the same true of the other photograph, Defendants' Exhibit "M-2"?

A. Yes, sir; all taken under our instructions.

Q. Following this sign shown in Defendants' Exhibit "M-3" what other signs of this type did you construct and erect?

Mr. GRIFFIN.—The question is objected to on the ground it refers to the signs installed less than two years prior to the filing date of the patent application in question.

A. We installed three more for the May Company then the next following year, 1913; that was December, I guess, along in December, 1912; just prior to 1913, along about Christmas time.

Q. Christmas time in 1912?

A. Yes, sir; Christmas, 1912.

(Deposition of Archibald Mackenzie.)

Q. What kind of signs were they?

A. "SILVER COLLARS." That was the Christmas of 1913; I should say that other one was 1912 that was installed; this was about a year later, 1913, Christmas; one said "HANNAN SHOES"; another "SILVER COLLARS"; we constructed those at one time; there were three of them right across the store.

Q. Those were all inside the store?

A. Those were all inside the store.

Mr. GRIFFIN.—Q. Those were all installed at Christmas of 1913? A. 1913.

Q. You mean to say all three of them were installed at Christmas of 1913?

A. The latter three I just mentioned, yes, sir; right along about that time; one in particular I know was constructed because, the reason I know it I bought some goods for Christmas presents when my wife was down in Los Angeles, so I am positive about the time that part of those—three—were installed; they were installed right along together there, the next three. [147]

Mr. LOFTUS.—Q. You state your wife was in Los Angeles the Christmas of 1913. Have you looked that up recently to verify it?

A. I have a card here (producing postal card) that my sister received from her at Los Angeles, with the date stamped on it, which shows when she was there.

Q. Is this the card you referred to (showing witness)? A. That is the card I refer to.

(Deposition of Archibald Mackenzie.)

Q. What is the date shown on it?

A. Just 1913 stamped; she did not have the date.

Q. That card was written by whom and received by whom?

A. By my wife on November 14th. Yes, it was 1913, received by my sister.

Q. I show you photograph illustrating a sign containing the words, "HANNAN SHOES FOR MEN—FOR WOMEN" and ask if you can identify the same. A. I can.

Q. What can you tell us about the sign shown there?

A. The signed was installed on the main floor of the May Company's Shoe Department.

Q. Is that the sign you referred to in one of your previous answers? A. It is.

Q. That was erected at what time?

A. The latter part of 1913.

Q. Who took this photograph?

A. Dev. Regnier, the same man who took the others, is my recollection.

Q. It was taken under your instructions?

A. Yes, sir.

Q. How soon after the sign was installed?

A. Very shortly.

Mr. LOFTUS.—Photograph identified by the witness is offered in evidence as Defendants' Exhibit "M-4."

Q. I show you another photograph illustrating a sign bearing the words "SILVER COLLARS 2

(Deposition of Archibald Mackenzie.)

FOR 25 CENTS” and ask if you can identify the sign shown there? A. I can.

Q. Is that one of your signs? A. It is.

Q. Erected for whom?

A. For the May Company.

Q. At what time?

A. Right along, in the latter part of [148] 1913.

Mr. LOFTUS.—Photograph identified by the witness offered and marked Defendants’ Exhibit “M-5.”

Mr. GRIFFIN.—Both exhibits “M-4” and “M-5” are objected to upon the ground that the witness testified that they were installed at a time less than two years prior to the filing date of the patent here in issue and sought to be invalidated; and upon the ground of insufficient identification.

Mr. LOFTUS.—What signs other than those you have already testified about, were constructed and erected by you in Denver, or elsewhere during the year 1913?

A. “Wm. Penn Hotel,” a metal sign hung underneath it by a man named Morgenson.

Q. I show you photograph illustrating the sign bearing the words “WM. PENN” in vertical position and the word “DRUGS” in a horizontal position beneath the same and ask if you can identify the sign shown thereon. A. I can.

Q. Is that the sign you have just mentioned as being erected in 1913? A. It is.

Q. Can you state approximately what part of the year either of those two signs were erected?

(Deposition of Archibald Mackenzie.)

A. The latter was erected along in December, 1913, and the other was erected just previously; they were hung close together; the signs were sold together; the "Wm. Penn" was first.

Mr. LOFTUS.—Photograph identified by the witness is offered in evidence and marked Defendants' Exhibit "M-6."

Mr. GRIFFIN.—The same objection is made to this photograph as was made to Defendants' Exhibits "M-4" and "M-5."

Mr. LOFTUS.—Q. Have you any record or papers tending to show when either of the signs illustrated in Defendants' Exhibit "M-6" was constructed and erected?

A. I have the contract.

Q. Will you please produce that contract?

A. (Producing [149] paper.) This is it.

Mr. GRIFFIN.—Any testimony with respect to this contract is objected to, upon the ground that it refers to a sign erected less than two years prior to the filing date of the patent application in question.

Q. Please read that contract into the record.

A. (Reading:)

ORIGINAL.

No. —.

Denver, Colo., Dec. 3, 1913.

To Mr. Morgensen.

We will make and put in place, ready to connect
— Prismatic Electric Sign as per sketch fur-

(Deposition of Archibald Mackenzie.)
nished, and approved by you for the sum of Fifty-five Dollars.

PRISMATIC SIGN CO.

By A. MACKENZIE.

Sign with
flasher
10-25 watt
lamps Gold
leaf rim.

The above proposition is accepted.

HENRY J. MORGENSEN.

20.00 cash \$10.00 each

30 days.

Paid in Full.

Mr. LOFTUS.—The contract produced by the witness is offered in evidence and marked Defendants' Exhibit "M-7."

Q. Which of the two signs shown in the photograph, Defendants' Exhibit "M-6," is referred to in the contract, Defendants' Exhibit "M-7."

A. The lower one, "DRUGS."

Q. Referring now to that contract when would you state that the "DRUGS" sign shown in the photograph, Defendants' Exhibit "M-6" was erected? A. In December, 1913.

Q. Is there any record of any payments made by the purchaser of this sign?

A. There is, on the back of the contract. [150]

Q. Please read those payments into the record.

A. (Reading:)

(Deposition of Archibald Mackenzie.)

Dec. 28th, 1913

Rec'd \$20.00

Feb. 16 10.00

Mch 13 10.00

April 9, 1914—\$10.00

Q. Who made these entries on the back of the contract? A. I did.

Q. At what time were they made, with reference to the receipt of payments; were they made at or about the same time?

A. The first payment was made about the same time, shortly after the installation of the sign.

Q. The question is, when were the entries made on the back of the contract?

A. At the time the payments were made.

Q. As I understood your previous answer, the first entry was made after the sign was erected?

A. Yes, sir.

Q. Do you recall any other signs of this type put up by you following the "WM. PENN" and "DRUGS" signs prior to October, 1914.

A. The "WEINBERGER" sign.

Q. What kind of a sign was that?

A. A vertical sign.

Q. Where was that installed?

A. On 15th Street, between Fremont and Court Place.

Q. In Denver? A. In Denver.

Q. Do you recall the date when it was installed?

A. January, 1914.

Q. Have you a photograph of that sign?

(Deposition of Archibald Mackenzie.)

A. I have.

Q. Please produce it. (Witness produces photograph.)

Mr. LOFTUS.—Photograph produced by the witness is offered in evidence as Defendants' Exhibit "M-8."

Q. Was that photograph taken under your instructions? A. It was.

Q. Does it correctly illustrate the sign which you installed for [151] "Weinberger"?

A. It does.

Mr. GRIFFIN.—The introduction of the photograph and the testimony with respect thereto is objected to, upon the ground that it was at a time less than two years prior to the filing date of the patent at issue here sought to be invalidated.

Q. Have you any record showing when that "WEINBERGER" sign was started or completed?

A. My contract.

Q. What does the contract show, or have you that contract with you? A. I have.

Q. What does it show?

A. January 17, 1914.

Q. Was that the date you made the contract?

A. Yes, sir; that is the date the contract was made.

Q. Does the contract show when the sign was completed? A. It does not.

Q. How soon after making of one of these contracts would the sign be completed?

A. It was to be up by February 1st; I think it

(Deposition of Archibald Mackenzie.)

was completed within the time limit.

Q. Was it usual for you to complete those signs within the time limit named in the contract?

A. It was.

Mr. LOFTUS.—The contract produced by the witness is offered in evidence as Defendants' Exhibit "M-9," and is offered in evidence as Defendants' Exhibit "M-9," and is as follows:

Defendants' Exhibit "M-9."

ORIGINAL.

No. —.

Denver, Colo., Jan. 17, 1914.

To M. Weinberger, 312-15 St.

We will make and put it in place, ready to connect, One Prismatic Electric Sign as per sketch *as per sketch* furnished, and approved by you for the sum of One Hundred Forty dollars

To be paid 40.00 when hung

and the balance \$100.00 at

25.00 per Month. Said sign

to be up Feb. 1st.

THE PRISMATIC SIGN CO.

Per A. M. GRALL. [152]

Sign is to be 17 ft. long and 32" wide.

The above proposition is accepted.

Sign to be 14 inch letters without the apostrophe S.

THE COURT PLACE LIQUOR CO.

M. WEINBERGER, Pres.

(Deposition of Archibald Mackenzie.)

(Endorsed:)

Feb. 17th

Cr by ck \$40.00

Mch 19th 25.00

Apr 20th 25.00

Mr. GRIFFIN.—The introduction of the contract is objected to as incompetent and immaterial; upon the further ground that it shows upon its face that it refers to a sign made at a time less than two years prior to the filing date of the patent in issue in this case.

Mr. LOFTUS.—Q. Do you recall any other electric signs of this type installed about the same time as the Weinberger sign?

A. One for the Empress Theatre.

Q. Have you a photograph of that sign?

A. I have.

(Producing photograph.)

Mr. GRIFFIN.—In Denver? A. In Denver.

Mr. LOFTUS.—Q. Referring now to the photograph which you have produced, what portion of the signs illustrated thereon were constructed and directed by you?

A. The signs known to the trade as V-shaped signs, the Prismatic.

Q. What is the reading matter on that sign?

A. "CONTINUOUS 11 A. M.—11 P. M. FIRST RUN PICTURES" and "VAUDEVILLE."

Q. When was that sign erected?

A. March, 1914; my recollection is that it was along near the same time, the first part of the opening, in the spring.

(Deposition of Archibald Mackenzie.)

Q. Was this photograph made under your instructions? A. It was. [153]

Q. Does it correctly illustrate the sign that is installed for this Empress Theatre? A. It does.

Mr. LOFTUS.—Photograph produced by the witness is offered in evidence as Defendants' Exhibit "M-10."

Mr. GRIFFIN.—This photograph is objected to upon the same ground as objection made to Defendants' Exhibit "M-4" and "M-5."

Q. Please produce that contract, Referring now to the contract that you have produced. What is shown thereby? What does it show?

A. It shows the Empress Theatre with a sign of the type mentioned.

Q. At what date? A. March 31, 1914.

Q. When was that sign completed?

A. I should say in thirty days.

Mr. LOFTUS.—Contract produced by witness is offered in evidence as Defendants' Exhibit "M-11."

Mr. GRIFFIN.—The offer is objected to as irrelevant, incompetent and immaterial; on the further ground that it refers to a sign erected within a period of less than two years prior to the application for the patent here in issue.

Mr. LOFTUS.—Q. The various photographs which you have identified and which have been offered here in evidence, do they correctly show the signs which you have installed and which you have testified about? A. They do.

Q. And are all those signs similar, or do they dif-

(Deposition of Archibald Mackenzie.)
fer in any respect as to construction?

A. The construction is the same in all of them, any more than some of them have a rim around their corners; a few with the rim off of them, but the general construction is the same.

Q. Did you ever construct a model of this type of letter? A. I did, several of them.

Q. Have you such a model available here, and which you can produce to show the type of letter which is used in these signs?

A. There is a model here; yes, sir. [154]

Mr. LOFTUS.—Please produce it.

(Witness produces model.)

Q. Referring to the model which you have just produced, by whom was that constructed, or under whose orders?

A. By the Prismatic Sign Co., of Denver.

Q. Approximately when was it constructed?

A. I believe during the year 1914; I could not positively say; we were making samples right along and fellows taking them out.

Q. What was the purpose and object in constructing this model or sample?

A. For salesmen to take with them to sell signs from.

Q. How did the construction shown in this model or sample compare with your commercial form of letter, such as shown in these various photographs?

A. The same thing; the same principle.

Mr. LOFTUS.—The model produced by the wit-

(Deposition of Archibald Mackenzie.)

ness is offered in evidence as Defendants' Exhibit "M-12."

Mr. GRIFFIN.—The offer of the model as an exhibit in question is objected to upon the ground that the witness has stated it was made in 1914, which shows upon its face that it was incompetent to anticipate any matter in the patent in issue in this cause.

Mr. LOFTUS.—Q. What can you say in regard to the sign for one Mrs. Ida Wright, Cadillac Hotel, 1731 California street?

Mr. GRIFFIN.—Objected to as leading. Let the witness tell of the signs he has made, and not have the names of signs suggested to him.

Mr. LOFTUS.—Q. Did you erect a sign for the person just mentioned? A. I did.

Q. When was that erected?

A. During the year 1912; I cannot give the exact month.

Q. Have you any records or papers bearing on this sign?

A. I have a letter from her in regard to what she thought of the sign—testimonial letter.

Mr. LOFTUS.—Please produce that letter.

(Witness produces the letter requested.) [155]

Mr. LOFTUS.—Please copy the letter into the records.

Mr. GRIFFIN.—I object to the copying of this letter into the record. It is an unsigned letter and improperly identified; dated at a time about six weeks prior to the filing of the patent in question,

(Deposition of Archibald Mackenzie.)

and insufficiently identifies any sign to which it refers, as to time or place.

(The letter is as follows:)

Denver, Colo., Sept. 9-14.

Prismatic Sign Co.,

Denver—

Gentlemen:

This is to certify that I have used one of your prismatic signs for more than a year and consider it the best sign for daylight and night service, and feel that it has brought me new business and consider it a good investment.

Mrs. IDA WRIGHT,

Cadillac Hotel,

1731 California St.

Q. Is that the original letter which you received from Mrs. Ida Wright. A. It is.

Q. When was that received?

A. I could not state positively about the date; there are too many dates to remember them.

Q. When was it received with reference to the date shown on the face of it.

A. It was received on the date shown there, September 9, 1914.

Q. Received by you?

A. Yes, sir; I went and asked for it.

Q. Where has it been kept since that time?

A. In the possession of the Prismatic Sign Co., among the records and things.

Q. Where have these various photographs which have been produced and contracts and other docu-

(Deposition of Archibald Mackenzie.)

ments which have been produced here, been kept?

A. In the possession of the Prismatic Sign Co.
[156]

Q. When were they removed from the files?

A. I brought them with me when I came here Monday at 1:30 o'clock.

Q. Of this week? A. Yes, sir.

Mr. LOFTUS.—Letter produced by the witness and which has been copied into the record is offered in evidence as Defendants' Exhibit "M-13."

Mr. GRIFFIN.—The letter is objected to; incompetent and immaterial, insufficiently identified; upon the further ground that it is not a signed letter and does not refer to a sign made at a particular time or place, nor to the kind of a sign.

Mr. LOFTUS.—Q. How did the sign which you erected for Mrs. Ida Wright compare with the other signs which you have testified about and which are shown in these various photographs and illustrated by the model exhibit "M-12"?

A. The same thing.

Q. Why did the Prismatic Sign Co. discontinue business?

A. On account of the high cost of materials, and material being hard to get, and on account of the competition we had with the City Utilities Commission and the Denver Gas & Electric Company.

Q. Can you name any other signs which you have not already mentioned, which were constructed and erected by you prior to October, 1914?

(Deposition of Archibald Mackenzie.)

A. We sent some to Butte, Montana, for the Val Blatz Brewing Company.

Q. Have you any records, documents or photographs bearing on the signs which you built for the Val Blatz Brewing Co.? A. I have.

Mr. LOFTUS.—Please produce them.

(Witness produces photographs and papers.)

Q. What is the nature of these records; describe them.

A. One is in the form of a contract, and another is a testimonial letter.

Q. Is there a photograph included there?

A. Yes, sir; a photograph. [157]

Q. Does this photograph correctly show one of the signs which you constructed for the Blatz Brewing Company? A. It does.

Q. Under whose instructions was this photograph taken? A. The Prismatic Sign Company.

Q. When and where was that sign erected?

A. Where was it erected?

Q. Yes, when and where.

A. It says "621 B Street," in Denver; I cannot tell you exactly the date; you are getting too many of them for me to try to remember; during 1914 though.

Q. What part of the year?

A. Along about July; it was summer, I believe, warm weather.

Mr. LOFTUS.—Photograph produced by the witness is offered in evidence as Defendants' Exhibit "M-14."

(Deposition of Archibald Mackenzie.)

Mr. GRIFFIN.—The photograph is objected to upon the ground of insufficient identification; upon the further ground that it refers to a sign constructed at a time less than two years prior to the filing date of the patent in question here.

Q. Referring now to the letter which you have produced, by whom was that received?

A. Received by the Prismatic Sign Co.

Q. At what date? A. August 15, 1914.

Q. Where has it been kept since that time?

A. It has been kept with the photographs that have just been produced in possession of the Prismatic Sign Co.

Mr. LOFTUS.—Letter produced by the witness is offered in evidence as Defendants' Exhibit "M-15."

Mr. GRIFFIN.—This letter is also objected to as purporting to be merely a copy, and is not a signed letter, and is insufficiently identified.

Q. What steps, if any, have you taken to verify or establish the dates when these various signs were constructed any erected by you, in Denver or vicinity? [158]

A. I have been in the office at the city hall for the permits, showing the date permits were taken out.

Q. Were you able to obtain certified copies of any of these permits?

A. I was, yes, sir, of the Denver Electrical Company.

Q. Have you that certified copy with you?

(Deposition of Archibald Mackenzie.)

A. I have.

Mr. LOFTUS.—Please produce it.

(Witness produces paper.)

Q. Which of the signs built by you for the Denver Electrical Company does this document refer to? A. The first one.

Q. Were you able to obtain any certified copy of the permit for the second sign? A. Yes, sir.

Q. Have you that with you?

A. There is one on the road. It should be here soon.

Q. When do you expect to receive that?

A. In the next day or two.

Q. Have you any photograph or illustration of a sign erected by you for the Denver Electric Company?

A. That should be here too; it has been sent; it should have been here; it should be here by this time.

Mr. LOFTUS.—Certified copy of the permit just produced by the witness is offered in evidence as Defendants' Exhibit "M-16."

Mr. GRIFFIN.—The offer is objected to as irrelevant, incompetent and immaterial; upon the further ground that it does not show the character of sign to which it refers; as to whether the sign was in any way in anticipation of anything in this action.

Mr. LOFTUS.—Q. Are you acquainted with Mr. C. E. Sprague?

A. I am.

(Deposition of Archibald Mackenzie.)

Q. In what way did you become acquainted with him?

A. Through working in co-operation with him. In the selling of signs in the city of Denver.

Q. What was the nature of Mr. Sprague's work?

A. He was with the Denver Gas & Electric Light Company, [159] the corporation that furnished the current for the signs.

Q. During what years did you know him in Denver?

A. About 1910 to 1915, I think; four or five years.

Q. Where is he now?

A. He is in San Francisco; I met him the other day here.

Mr. LOFTUS.—Notice is given on the record that Mr. C. E. Sprague will be called as a witness on behalf of the defendants in this case immediately following the conclusion of the present witness' testimony. There being no further direct examination at this time, it will be necessary to delay the completion of this witness' testimony until the photographs and certified copies of the permits mentioned by him have been received from Denver, Colorado. The counsel for plaintiff is advised that he may cross-examine at this time, with the understanding that the direct examination of the witness will be completed just as soon as the documents referred to have been received, the time and place of which will be duly communicated to him.

(Deposition of Archibald Mackenzie.)

Cross-examination by Mr. GRIFFIN.

Q. How did you come to go into the electric sign business?

A. We patented this Prismatic Sign; that is the way we went into the electric sign business. We had been in the sign business for years, in connection with our regular business.

Q. What was the number of the patent, do you know?

A. No, sir; I could not give you the number.

Q. In whose name was the patent taken out?

A. Archibald Mackenzie and T. M. Norton.

Q. What was the date of that patent?

A. The issuance?

Q. Yes.

A. I am all confused on dates. In 1910, I think it was January, 14th I could not tell you positively without referring to something to refresh my recollection; I have got [160] too many things mixed up, and that is one thing I ought to remember is the date of my patent, if anything.

Q. You are uncertain as to dates?

A. Yes, sir; I am; that is where there are so many of them together.

Q. Don't you know when this patent was applied for?

A. I think it was patented January 14, 1910.

Q. And that patent illustrates the construction of the Prismatic Signs, does it? A. It does.

Q. Have you a copy of that patent?

A. I have.

Q. Have you a copy with you?

(Deposition of Archibald Mackenzie.)

A. No, sir; I have not.

Q. Does that patent illustrate the construction of the first one of these signs that you have made?

A. Of the sample, yes, sir, the model.

Q. And does that patent illustrate the construction of the sign that you sent to Littleton, Colorado?

A. It does.

Mr. LOFTUS.—Q. Do you understand what is meant by the word “illustrate.”

Mr. GRIFFIN.—He does not need to have any question asked him. I object to any question being interjected by opposing counsel during the cross-examination of the witness.

Mr. LOFTUS.—Then I object to the questions directed along this line, unless the questions make clear what is intended by the word “illustrated.”

The WITNESS.—That would depend on what he means by “illustrate.” They were made according to the patent as near as we could make it.

Mr. GRIFFIN.—They were. Now you say that it was not until after 1912 that the Denver ordinances would allow you to put up one of those signs.

A. To extend out over the sidewalk; We could put them flat; next to the building; there was an ordinance that said that class of sign was to be classified as an electric sign and that if you put a sign out from a building, if it was an electric sign, it should be classified as being outlined by electric bulbs.

Q. You did not put up any of those signs then until after that ordinance was changed?

A. Yes, sir; put up one for the Denver [161]

(Deposition of Archibald Mackenzie.)

Electrical Company, flat faced to the building; one for the New York Floral Company, back on the lot there; we were not allowed to go out over the sidewalk.

Q. And the signs that you put up in 1911 were made in accordance with the construction outlined in the patent?

Mr. LOFTUS.—Same objection as previously made, on the ground that the question is indefinite.

A. They were made along the same lines; yes, sir; as near as we could make them, to conform with the construction mentioned in the patent.

A. To conform with the construction disclosed in the patent? A. Yes, sir.

Q. And of these signs made in 1912, they were made also to conform with the construction disclosed in your patent? A. Yes, sir.

Mr. GRIFFIN.—I would like to get a copy of this patent and I ask the witness if he can certainly place the date.

Q. Upon making an examination in the Annual Index of the Patent Office we ascertain the number 977665 on an illuminated sign, dated December 6th. Is that the patent to which you have just referred. (Exhibiting to witness.)

A. That is the patent.

Q. Showing you in the Official Gazette of the Patent Office the printed matter relating to patent 977665 on illuminated signs, found in volume 161 of the Official Gazette at page 84, I will ask you if that is the sign you have just referred to.

(Deposition of Archibald Mackenzie.)

Mr. LOFTUS.—Objected to for the reason that the Patent Office Gazette purports to show only a very limited portion of any drawing or description of the patent, it represents secondary, and not the best evidence, and thus any further cross-examination based on the impartial showing of the Patent Office Gazette would be improper, unless the complete copy is obtained, so that the witness may be able to identify the construction shown, in the patent and answer the question intelligibly. [162]

Q. Did you ever have any other patent than that one on the subject matter of electric signs?

A. There is one pending; it has never been finally allowed that I have heard of.

Q. Did you ever have any patent as early as 1914 on an electric sign, other than the one I have called your attention to?

A. I think we applied for one prior to that, an improvement on the same sign.

Q. Was the patent granted on the application?

A. No, sir; it never has up to date, that I have heard.

Q. But, in any event, that showing in the official Gazette illustrates the sign made by you in 1911 and 1912?

Mr. LOFTUS.—Objected to as irrelevant, incompetent and immaterial; for the further reason that the showing is incomplete, and is diminutive to the point of being incapable of understanding.

Mr. GRIFFIN.—Q. Do you understand the showing made in the illustration on page 84 of the

(Deposition of Archibald Mackenzie.)

Gazette, volume 161, relating to your patent?

A. Well, that is the official drawing that our patent was supposed to be based on.

Q. Do you understand it? A. I do.

Q. Do you think that it properly illustrates the invention disclosed in your application?

Mr. LOFTUS.—Objected to as calling for the conclusion of the witness; it being immaterial as to what this witness thinks as to the accuracy of the reproduction.

Mr. GRIFFIN.—Does that illustration properly represent the signs made by you and here testified about, in 1911 and 1912?

A. The working principles of it, yes, sir.

Q. Does that sketch fully illustrate the signs you have testified about as being made by you in 1911 and 1912?

Mr. LOFTUS.—Objected to, for the reason the alleged illustration on its face purports to be an abridgment. A. It does not. [163]

Q. You say the first sign made by you, such as you have testified about, was installed for the Denver Electrical Company in December, 1911?

A. Yes, sir.

Q. When did that sign reach the Denver Electrical Company, and where is that sign now?

A. I could not tell you.

Q. How long was it used?

A. It was used up to the date they took a double store on the corner for their show rooms, when this new sign was made, and that store was rented to an-

(Deposition of Archibald Mackenzie.)

other party, and the sign taken down; I don't know what became of the sign.

Q. And you have no photographs of that sign?

A. There are some on the road now; they should be here; there were orders left to have them taken.

Q. When were the photographs taken?

A. They are not taken yet; they were telegraphed for; they should be here now.

Q. Is that sign still in existence?

A. The one referred to, I could not say.

Q. The sign installed in December, 1911?

A. I could not say where that is.

Q. How could there be any photograph of it taken at the present time?

A. The second sign I referred to of the Denver Electrical Co.; there were two signs made for them.

Q. And the second sign made for the Denver Electrical Company was made sometime in 1913?

A. No, sir; it was made about six months after December, 1911—in the summer of 1912.

Q. Who was working for you at the time the signs were made?

A. The special sign for the Denver Electrical Co.?

Q. No, at the time, in 1911 and 1912.

A. Norton and myself made most of those signs at that time.

Q. You and Mr. Norton were the sole employees?

A. Yes, sir, at that time, when we first started in.

Q. Where is Mr. Norton now?

A. In Denver. [164]

(Deposition of Archibald Mackenzie.)

Q. What is his address, do you know?

A. It used to be 1835 West 25th Avenue, but he is in the next block now; the Denver address would catch him.

Q. What company is he with?

A. In business for himself, painting and decorating, the same business that I am in.

Q. And these signs that were erected at Littleton, Colorado, were they also made in accordance with the construction disclosed in your patent?

A. They were made according to our patent, but they had a little different style letter; the rim was put on those—that was not included in the patent, which made it a little more elaborate sign, a more effective sign, by rimming them that way.

Q. And what time of the year were those signs installed, did you say?

A. They were installed in the summer of 1912.

Q. How do you place that date?

A. Well, I know the Denver Electrical Company sign was made in 1911, and the Littleton signs were the next signs made after that; I remember it was in the summer months.

Q. Did they allow you to put up an interiorly lighted sign prior to 1912 at any place in Denver?

A. Put them up any time; no restrictions on interior lighting.

Q. What were the restrictions prior to 1912?

A. In order to be classified as an electric sign and get the privilege of going out six feet from the building and fifteen feet above the sidewalk—which

(Deposition of Archibald Mackenzie.)

was the ordinance for electric signs—every letter or device had to be outlined by electric bulbs. Ours did not have that, so it was not classified as an electric sign.

Q. But you were still allowed to hang one of those signs prior to that time, you say?

A. Only to conform with the ordinance.

Q. Would an interiorly lighted sign conform to the ordinance?

A. There was no ordinance on interior lighting; anything beyond the lot line was controlled by the ordinance. [165]

Q. No, I mean interiorly lighted signs, as distinguished from other signs?

A. That is what I say; they would not allow an interiorly lighted sign unless it was outlined by bulbs; that was the only kind of a sign that was classified as an electric sign. But I am speaking of interior signs, inside of a building; I have reference to those.

Q. Have you installed those inside of buildings?

A. I have, for the May Company, in 1912.

Q. And this sign for the May Company, when was that installed? A. 1912.

Q. You said in November, 1912; is that correct?

A. Whatever date I gave you at the time is correct.

Q. You have no definite recollection as to when the May Company sign was actually installed, and depend wholly upon your recollection—

A. (Interrupting.) I have an affidavit here—

(Deposition of Archibald Mackenzie.)

Q. (Continuing.) —or a record or some other matter obtained from the May Company?

A. I was putting out a good many signs; I cannot remember the exact date of every sign. I testified I put out 75 or 80, I thought; it is pretty hard to remember each date.

Q. Now, about this Neef Brothers Brewing sign, when did you say that was put out?

A. In the summer of 1912.

Q. How do you fix that date?

A. I know it was among the first signs that we built that could go out at all, that was out of Denver and we built that in 1912; that was the first year that we were allowed to put up any signs that would project over the sidewalk in Denver, and this went out a little; we could put it up there. I know it was prior to 1912.

(Thereupon, by consent, a recess was taken to two o'clock P. M., Wednesday, February 9th, 1921, at which time the parties being present as before, the cross-examination of the witness was [166] resumed.)

Mr. GRIFFIN.—Q. Have you talked with anyone concerning the testimony you are about to give?

A. I have, previously.

Q. During the intermission.

A. No, sir; first time they saw him.

Q. Have you talked with any other person about the testimony you are about to give?

A. I have talked the testimony over generally, in

(Deposition of Archibald Mackenzie.)

a general way; that is what I was brought out here for, to testify to my sign.

Q. Who brought you out here?

A. I was brought out by Mr. Thompson.

Q. The Federal Sign System paid your expenses?

A. Yes, sir; naturally; why should they not?

Q. And you were brought out for the sole purpose of giving testimony in this case?

A. Yes, sir.

Q. Are your other expenses paid?

A. Yes, sir, and my time.

Q. And your time?

A. Yes, sir. I am in business in Denver, and I cannot very well afford to give my time for nothing.

Q. Up to the first, we will say up to January 1st, 1912, how many signs had you made altogether, of any kind, electric signs?

A. Oh, roughly speaking, I should say in the neighborhood of about 25.

Q. Can you remember some of these signs, and where they were installed.

A. The two went to Littleton prior to June 1, 1912. The reason I can state that date is, the two in Littleton—

Q. (Interrupting.) I am not talking about 1912.

A. That is the question you asked.

Q. I say signs of any kind, prior to January 1, 1912.

A. That is what I say; there were signs made that went to Littleton prior to June, 1912.

(Deposition of Archibald Mackenzie.)

Q. I am not asking about June. You did not get my question.

A. I don't know how else I can answer it.

Q. Of signs made prior to January 1, 1912, of any kind, how many signs had your company made?

A. I know we had not made very [167] many prior to that time that the Denver Electric Company sign was made.

Q. You can't remember of any sign, other than the Denver Electrical Company sign, made by your company prior to January 1, 1912?

A. One for the Sanderson people, for coffee; that has not been introduced at all—"MOROVIT," I think.

Q. The Sanderson Coffee Company?

A. Yes, sir; W. S. Sanderson Brothers.

Q. Where was that installed?

A. On 15th Street, between Curtis and Arapahoe, in Denver, what is known as the tramway loop.

Q. And those are the only two signs that you can remember installing prior to January 1, 1912?

A. Those two went to Littleton, I am satisfied, prior to that.

Q. No, prior to January 1; not June.

A. I know, I understand what you mean. I say I am certain now of the Littleton signs. What refreshed me about that is that I got to thinking about the time I could put up the Denver sign, which was the 16th of June, 1912, and I know the Littleton signs went to Littleton before we were able to put up any in Denver at all; before we could

(Deposition of Archibald Mackenzie.)

hang any signs out any distance at all from the lot line in Denver; we placed those in Littleton.

Q. This "MOROVIT" coffee sign; where was that sign hung? That was not a sign of this character?

A. A sign of this character, but not extending from the lot line; it was in the doorway.

Q. It was not a sign with a raised rim?

A. Yes, it was. It was put inside of the lot line. We were not allowed to go out any distance from the lot line under the ordinance; they had that drafted after June, 1912.

Q. You said this morning you had never installed a sign of this character, except one in 1911.

A. I did not.

Q. You said the first sign for the Denver Electric Company did not have a raised rim letter.

A. That is correct; the [169] first one did not.

Q. The first one did not? A. No.

Q. That was the sign installed in December, 1911?

A. That was the first sign installed.

Q. And the other sign was installed about six months later?

A. Yes, sir, that is correct. This "MOROVIT" coffee sign was installed along about the same time, before this ordinance took effect that I spoke of, we were not allowed to go out beyond the lot line; at the time that was installed it was put in the doorway.

Q. That was after the first sign was installed?

(Deposition of Archibald Mackenzie.)

A. For the Denver Electrical Company, yes, sir.

Q. That must have been during 1912?

A. Yes, sir; I think it was, it was prior to June, 1912, because it was put up before that ordinance went into effect.

Q. But the Denver Electrical Company sign was the first one with a raised rim that you put up?

A. That is right.

Q. And the first sign that you put up for the Denver Electrical Company did not have a raised rim?

A. The first sign put up in Denver Electrical Company was without the raised rim; as I say, there was an ordinance in Denver under which we were not allowed to go out beyond the lot line; those Littleton signs were put up along about the same time that the Denver Electrical Company sign was put up.

Q. The Denver Electrical Company sign with a raised rim, you mean, about that time?

A. Yes, sir; the signs in Littleton were put up about the same time that was, too. The reason I know that is that we were at 1808 Arapahoe Street when the Denver signs were made, and the Littleton signs also, the first place I opened up in Denver.

Q. And you thought that was in July or August, you said this morning?

A. It was prior to June, 1912, I said I was positive about it, but I got to thinking about things and I remember now the folks had the mayor put

(Deposition of Archibald Mackenzie.)

through an ordinance [169] the first time by which we could put those signs up. Those Littleton signs were hung up prior to that, because we went to Littleton to put out signs to start with.

Q. You said this morning you had put up not over a dozen signs up to the beginning of 1912.

A. That is probably right.

Q. Then none of these signs were of the raised rim type?

A. Yes, they were; the signs in Littleton were both of the raised rim type. ?

Q. You just said you never had a sign in Littleton until the summer of 1912.

A. I said it was prior to June, 1912, because it was put up before we put up any signs in Denver. They were the first signs that we put up that extended out any place, and they were put up prior to June, 1912, because I had this ordinance changed, permitting the signs in Denver at Arnold's election, Henry J. Arnold's.

Q. The first sign that you remember of putting up with a raised border was the Denver Electrical Sign, you said this morning?

A. The first sign in Denver, yes, sir. ,

Q. And that sign was put up, you say, in June, 1912.

A. I said it was along about that time—no, I did not say the Denver Electrical Company; I said the signs at Littleton were put up prior to June, 1912.

Q. Then the Denver Electrical sign, with the raised border, was put up when?

(Deposition of Archibald Mackenzie.)

A. It would probably be in June, six months from December, 1912, or practically that.

Q. In July or August?

A. It was practically six months, as near as I can judge it; I have no way of fixing that exact date.

Q. But the first sign put up in December, in 1911, for the Denver Electrical Company did not have a raised border around the letters? A. No, sir.

Q. You said there were two signs that went to Littleton, Colorado; one of the signs reading: "DRUGS" and the other "BAR."

A. That is correct. [170]

Q. Are either one of these signs up at the present time? A. No, sir.

Q. When were they taken down?

A. When the state went dry, then the "BAR" sign was taken down. That would be, I think, in 1916.

Q. What about the "DRUGS" sign?

A. Well, the party quit business; I don't know what became of that sign.

Q. Who took the photograph that is marked Defendants' Exhibit "M-A-2"?

A. A man by the name of Dev. Regnier.

Q. Where is his place of business?

A. In Denver.

Q. Is he in Denver now?

A. He was the last I knew of him, yes sir.

Q. Do you know his address?

A. He is on Bennett Street, between Fifth and

(Deposition of Archibald Mackenzie.)

Sixth; I could not tell you the exact number.

Q. You can, at the present time, remember no other sign than the "DRUGS" sign shown in Defendants' Exhibit "M-A-2" with the raised moulding around the edge of the letter, put out by your company. A. That is the Littleton sign?

Q. The Littleton sign.

A. And the Denver Electrical Company sign, they were all put up along about the same time; the Denver Electrical Sign was first and these followed right along.

Q. Neither the Denver Electrical Company sign, with the raised border, the second sign put up by the Denver Electrical Company, nor the Littleton sign, are up at the present time?

A. The Denver Electrical Company sign is; it was up the day I left Denver, anyhow.

Q. Where is this second sign installed?

A. At the corner of 15th and Cleveland Place.

Q. At the corner of 15th Street and Cleveland Place in Denver? A. Yes, sir.

Q. Has it been up ever since it was installed in that location? A. Yes, sir.

Q. And you have no photographs of the first sign that was installed for the Denver Electrical Company, which is [171] referred to in the certified copy of the permit, "M-16"?

A. No, sir; I have no photograph of it.

Q. And that sign is not in existence at the present time? A. Not to my knowledge.

Q. Did you look at the records to see what was

(Deposition of Archibald Mackenzie.)

the date of installation of the second sign that was put up for the Denver Electrical Company? ,

A. It ought to be here, yes; I expect it here any day.

Q. Then of these signs erected by you prior to October 19, 1912, what ones, of the ones you have mentioned, had raised borders around the letters and were provided with lamps behind the body of the sign and glass for the illumination of the letter.

A. Prior to October?

Q. Prior to October 19, 1912.

A. The Denver Electric.

Q. One sign; that was the second sign.

A. Yes, sir; the second sign. The two signs at Littleton and the florists' sign, that is the New York Floral Company sign and the DeWitt sign.

Q. Where was the DeWitt sign erected?

A. On Broadway, between 8th and 9th. I am getting this confusel with another one. The Du-Bois, I should have said. We made one for the DeWitt Hotel, but that was later.

Q. And you can remember of only five signs that were erected prior to October 19, 1912?

A. That "MOROVIT," I think, was; I am quite certain. You said "the ones referred to," and that was the question I was answering.

Q. I mean signs provided with a raised border around the letter.

A. That is all I can think of just now.

Q. And you had no employees during the time?

(Deposition of Archibald Mackenzie.)

A. Not during the making of those first signs;
No, sir.

Q. You did all of the work yourselves?

A. We did, my nephew and I.

Q. You and Mr. Norton? A. Yes, sir.

Q. Was there any other sign company in business at Denver at that [172] time?

A. Oh, yes, several.

Q. Name them.

A. The Curran Company, Ellis Eelectric Sign Company, The Denver Gas & Electric Company, handled signs of all kinds; they would sell them to anybody, and get somebody to make them.

Q. Any others?

A. I think the Cusack Company; I think so; I could not say positively; they succeeded Curran; I could not positively say whether they were building electric signs at that time, but they succeeded the Curran Company; I think they did. They are in the business now anyway,—Thomas Cusack Company.

Q. And is Mr. Norton engaged in the Electric sign business at the present time?

A. No, sir; in the painting and decorating business.

Q. Associated with you in any way?

A. Only as our copartnership held out in the sign business, that is all; not in any other business.

Q. At the present time he is not engaged with you in any way?

A. As a partner in the prismatic sign business.

(Deposition of Archibald Mackenzie.)

Q. Are you running the Prismatic Sign Company?

A. It is still in existence, yes, sir; it is not doing business a regular business, but they are still in existence.

Q. Is the Prismatic Sign Company a corporation or copartnership?

A. Just a copartnership.

Q. And Mr. Norton continues to be a copartner?

A. Yes, sir.

Q. And you never dissolved the partnership?

A. No.

Q. But you have not done any business as a copartnership since 1915?

A. Not since the war, whatever date that was.

Q. When the war began, you mean?

A. Since the war began, we have not practically done any sign business at all; the materials were just scarce, and we could not furnish light for the signs and we just lay down for a while.

Q. Do you expect to go into the sign business again? A. Some day probably. [173]

Q. Did any of the electric sign companies operating in Denver make any signs, of the character you testified about here? A. No, sir.

Q. During this period? A. No, sir.

Q. Where can Mr. Norton be found at the present time?

A. 25th and Elliott, would reach him; I can not tell you his exact address; he used to live at 2833

(Deposition of Archibald Mackenzie.)

West 25th Avenue; it is in the next block; his mother lives there; that address would reach him.

Q. You said this morning that you had installed about a dozen of these signs up to 1912; was that correct?

A. Well, those that I gave you I just made that estimate roughly, just offhand; I don't pretend to swear to the exact number.

Q. You don't know as a matter of fact, how many you did make, up to the first of January, 1912?

A. No, without I would stop and figure out, put them down as I went over them.

Q. At the present time you know of no other sign that was put up except the Denver Electrical sign, that did not have the border, prior to 1912?

A. Yes, I did; those at Littleton prior to June, 1912.

Q. I did not say June, 1912. I wish you would answer the question.

A. I am trying to answer it. You just asked me a question just now, prior to that date, prior to 1912, you said.

Q. I said prior to January 1, 1912, you do not know of any sign except the Denver Electrical Company's sign, which sign did not have the raised border around the letters, put up prior to January 1, 1912, by you?

A. That had been put up in June, 1912; the raised letter sign, that was about six months later, I would imagine; that is just an estimate, though, of the time. The first sign was installed in 1911

(Deposition of Archibald Mackenzie.)

for the Denver Electrical Company, and this was about six months later. [174]

Q. But you do not say that the first sign installed for the Denver Electric Company, had a raised border around the letters.

A. That first one did not.

Q. Referring now to this letter from Ida Wright, about the Cadillac Hotel, was the sign that that refers to put up shortly before the date of this letter?

A. That letter was gotten pretty nearly a year after the sign was put up.

Q. Then the sign was put up about September 9, 1913? A. About a year previously to that date.

Q. Who has kept the books and papers of the Prismatic Sign Company since you discontinued business?

A. I have part of the time and my nephew had these when I moved to the house that I moved out to and have at the present time. They have been in our possession all of the time.

Q. Have you any more of the books of the Prismatic Sign Company, showing the payments made upon any of the signs, in 1912?

A. Practically all of the signs I can think of, in 1912 I have mentioned here.

Q. But have you any of the books showing payments on any of the signs made in 1912?

A. Only have the contracts, as you see there, with credits on the back of them.

Q. You kept no books?

A. I did not keep a regular set of books, no, sir.

(Deposition of Archibald Mackenzie.)

Q. The only record that you have of the signs are the records that you have offered here?

A. That, with what you will find a record of in the City Hall; for every sign sold we had to take out a hanging permit; you can get the data there.

Q. But you have no other personal records?

A. Not at the present time.

Q. Did you keep records at that time?

A. Only the contracts.

Q. The sign that you call The Prismatic Sign was the sign that was constructed in accordance with the disclosure of your patent, [175] number 977665.

Mr. LOFTUS.—I object to the question as being indefinite for the reason it does not appear that the witness is versed in the interpretation of patents, and it does not appear that he clearly understands what is meant by the word or term “disclosures,” it being a technical term and one subject to various interpretations.

Mr. GRIFFIN.—You are familiar with the patent you obtained of the number I have just mentioned, are you not?

A. When I see it before me I probably would be, as far as the number is concerned. I am not versed on the patent law at all.

Q. As far as the subject matter and construction of the sign disclosed in that patent, you are familiar with that sign, are you not?

A. As far as the claims in the patent are concerned, we built the sign as nearly to the claims

(Deposition of Archibald Mackenzie.)

as we could make it, to cover the patent; the construction had nothing to do with it.

Q. You built your signs as nearly like the patent as possible?

A. As nearly like the claims mentioned in the patent as possible, yes sir.

Q. Didn't you make the sign like the drawings?

A. No, sir; I did not; the original drawings had a glass face; we made it of metal, with a cut-out letter and a bevelled rim on most of them.

Q. Do you know whether this druggist to whom you sold the sign in Littleton is in business now?

A. I could not say; the last I knew of him he moved his location from where he was and was running a kind of a little concession part out there and he went out of that I know. I could not say what became of him.

Q. He is not in the drug business at the present time? A. I could not say.

Q. You don't know his present location?

A. No, sir; I do not.

Q. How about the Neef Brothers Brewing Company?

A. They are out [176] of existence, that is as far as the company is concerned, I guess.

Q. Where are the owners of the company at the present time?

A. I suppose Mr. Neef is in Denver, but I could not say. The Brewers all quit business.

Q. The owners were named Neef?

A. Yes, Neef.

(Deposition of Archibald Mackenzie.)

Q. You have not their location in Denver?

A. No sir; I have not. Their old brewing plant was over on the west side; I could not tell you the exact address. "Neef Brothers Brewery" would reach them if they are still in business there.

Q. And this florist sign?

A. The New York Floral Company.

Q. Is that sign still in existence?

A. I don't think they are using that sign. The New York Floral Company is still in existence.

Q. And at the same place?

A. They are at the same address I gave you; it seems to me they are in the same block, but moved a little further up.

Q. How about this DuBois sign.

A. That is not in existence any more; that was a picture show out on Broadway; that disbanded business long ago.

Q. And you don't know where any body can be found who was connected with that establishment at the present time?

A. Not DuBoise, no.

Q. Was the translucent material in all of these signs similar to that used in the word "BLATZ"?

A. Yes, sir.

Q. In exhibit "M-14"?

A. Yes, sir; that is the material we used in all of those signs.

Q. What was the character of those materials?

A. It was a ribbed glass.

Q. You have used wire mesh for the purpose of

(Deposition of Archibald Mackenzie.)

producing the translucent material at the back of sign letters, have you not? A. No, sir.

Q. You have never used it? A. Never used it.

Q. Are you working for yourself at the present time? A. Yes, sir. [177]

Q. Is Mr. Norton working for himself?

A. For himself, Yes, sir.

Q. And you are both independent of each other?

A. Yes, sir, independent contractors, that is in the business we are in at the present time.

Q. I mean in the business you are in at the present time? A. Yes, sir.

Q. This first sign that was made for the Denver Electrical Company was not the same as the model you have shown us here? A. No, sir.

Q. That was a sign made in December, 1911?

A. It was made the same in inward construction, but they did not have the rim letters.

Q. Now speaking about this floral sign, that was a roof sign, you said?

A. Vertical roof sign; yes, sir.

Q. Vertical roof sign? A. Yes, sir.

Q. How large was it?

A. I believe it was twelve feet high; I would not say positively; it was about twelve feet.

Q. And you made for the roof sign an interiorly lighted sign for the raised letters?

A. Yes, sir.

Q. How high on the roof was it placed on the street?

A. It was on the top of a one story building.

(Deposition of Archibald Mackenzie.)

Q. That was made for the New York Floral Company?

A. That was made for the New York Floral Company.

Redirect Examination by Mr. LOFTUS,

Q. You spoke about an ordinance passed in Denver permitting the erection of these interiorly lighted signs, and when they projected out on to the street. Do you know when that ordinance was passed?

A. Prior to June 1912, or right along about June 1912; I should say that was when the new officers took office that was the time the new ordinance was passed, shortly after the installation of the officers; right around about June or July, 1912.

Q. Did you have anything to do with the passage of this ordinance? [178]

A. I did.

Q. What part did you have?

A. I had to go before the Board of Aldermen and Supervisors and ask that a special ordinance be passed permitting my sign to be hung out.

Q. Who was the Mayor at that time?

A. Henry J. Arnold.

Q. When was he elected?

A. Elected in May, 1912, and took his office June 1, 1912.

Q. How soon after Mayor Arnold took office was this ordinance passed?

A. It was one of the first new ordinances passed inside of thirty days.

(Deposition of Archibald Mackenzie.)

Q. On cross-examination you were asked about your patent of 1910. Do you understand what was meant by the terms "illustrated in" or "disclosed by" that were used by the cross-examiner?

Mr. GRIFFIN.—I object to that question, as the questions were answered in the affirmative by the witness.

A. Well, I am not familiar with the patent terms as applied to a patent. I understood, as I say, that I manufactured signs as nearly as I could to correspond to the claims of the patent. I am not familiar with patent terms, or how you folks might place it. The sign was not built entirely according to the drawings.

Q. What differences were there between the signs which you built, those in Littleton and Denver, and the particular sign shown in the drawings of your patent?

A. The particular drawing was just from a model with a glass front; we were not allowed to put up glass front signs, so we had to change it to metal; we had a rim front, and cut the letter out of the rim; in order to get by the City ordinance, we had to change the front.

Q. Was there any raised moulding shown on the patent drawings? A. No, sir.

Q. How much notice did you have before making this trip to San Francisco?

A. I was notified of it about 5 o'clock Friday and I had to leave at 5 o'clock Saturday. [179]

Q. That was the first notice you had?

(Deposition of Archibald Mackenzie.)

A. Yes, sir.

Q. Referring now to the first sign which you put up for the Denver Electrical Company, you stated that it did not have a raised border. Were you building signs at that time with a raised border?

A. Had not done so at that time. The first one was used at the electric show in 1911; that was the first Denver Electrical sign.

Q. Did you submit to the Denver Electrical Company a plan for a sign with a raised border, when you first negotiated with them?

Mr. GRIFFIN.—I object to the question as not proper redirect examination.

Q. When you first negotiated with the Denver Electrical Company for the erection of a sign, did you submit to them a plan for a sign with a raised border?

A. On the second sign, yes, sir.

Q. Not in the first sign?

A. Not in the first sign. The first sign was used in the electric show, for a temporary sign and they finally moved it over to their shop and put it over the door. The first sign was for a display sign in the electric show.

Q. Have you a photograph of the sign reading "BAR" which was erected in Littleton, as you have testified? A. I have.

Q. Is this a photograph of it? (Exhibiting photograph to witness.) A. That is it.

Q. By whom was that photograph taken?

(Deposition of Archibald Mackenzie.)

A. By Dev. Regnier, the same man that took the others.

Q. Under your instructions? A. Yes, sir.

A. Does that correctly illustrate the sign that you erected at Littleton?

A. Yes, that is an exact duplicate of it.

Q. Is that sign in the background yours, reading "DRUGS?" A. It is.

Mr. LOFTUS.—Photograph identified by the witness is offered in evidence as Defendant's Exhibit "M-17." [180]

Q. You stated that the Prismatic Sign Company of Denver had not done any appreciable business since the war. You had reference to the time when the United States entered the war, or when some other country entered the war?

A. I had reference to the time the United States entered the war. The lighting companies were all shutting down on illuminating materials, they got so high that you could not get any profit out of your signs and we just quit business for the time being.

Q. You did not erect any signs, in Littleton, after the passing of this ordinance that you referred to, in Denver? A. In Littleton; no, sir.

Recross-examination by Mr. GRIFFIN.

Q. When did you see any one connected with this suit prior to your visit here?

A. I saw the Denver man, who just notified me they wanted me to come.

Q. When?

(Deposition of Archibald Mackenzie.)

A. That was on Thursday, I think, first.

Q. And had you communicated with any other person connected with the suit prior to that time?

A. I did not even know there was a suit pending until he told me he wanted some affidavits, and then they wanted me to come.

Q. You found this sign, the raised border around the edge of the elements of the letter a good selling proposition? did you? A. Yes, sir.

Q. You thought it entirely new? A. I did.

Q. Did you apply for a patent on it?

A. No, sir; I did not think I could get a patent on it.

Q. This ordinance that was passed in Denver in 1912, regarding interiorly lighted signs, what specifically did it provide?

A. That in order to be classified as an electric sign and get the privilege to go out 6 feet—which was the ordinance for electric signs—and fifteen feet above the sidewalk, the ordinance [181] read, every letter or device had to be outlined by electric bulbs, to be classified as an electric sign.

Q. That was prior to 1912?

A. Yes, sir.

Q. And that ordinance was passed in June?

A. Right after June, 1912, the new ordinance passed, permitting my signs to be hung.

Q. And no one concerned in this suit knew what you were going to testify to when you started for California? A. No, sir; not as far as I know.

(Deposition of Archibald Mackenzie.)

Re-redirect Examination by Mr. LOFTUS.

Q. Then, as I understand it, your sign, with the lights on the inside, was not classified as an electrical sign? A. Not at that time, no, sir.

Q. To be an electrical sign, the lights had to be on the outside?

A. That is the idea, the time previous to June, 1912 or shortly after that time, right after the ordinance was passed.

Mr. LOFTUS.—The witness is dismissed to be recalled for the purpose of identifying photographs and other documents which are now enroute from Denver.

Deposition of C. E. Sprague, for Defendants.

Thereupon the defendant called C. E. SPRAGUE as a witness, who testified, in answer to a question by Mr. LOFTUS, as follows:

My name is C. E. Sprague; age forty years; occupation salesman. I reside at 675 O'Farrell St., San Francisco, Cal. In 1910 I was with the Denver Gas & Electric Co. as salesman, looking after advertising illumination. I had a great deal to do with electric signs. I was familiar with the sign put up in Denver by the Prismatic Sign Company. The sign was an interiorly lighted sign, the letters being cut out of sheet metal and backed [182] up with translucent glass, or the space cut out was backed up to form the figure, the letter, with translucent glass; the rim edge about the letter had a flaring edge like the ordinary letter, ordinary size,

(Deposition of C. E. Sprague.)

was lighted with two Mazda lamps; the metal was generally of twenty-six gauge, galvanized sheet steel. The rim had a flaring edge. It was made of sheet metal soldered to the face of the sign. (Witness makes a rough sketch.) I intend this to represent the translucent glass, and will write the name of the part on it with the lead-line running to the part.

The sketch is offered in evidence as Defendant's Exhibit "M-18," "Sprague's sketch of prismatic sign."

Mr. GRIFFIN.—The sketch is objected to as insufficiently identified, incomplete, irrelevant and immaterial.

A. I first became acquainted with a sign of this type in the period covering two or three years prior to September, 1914. I left Denver November 29, 1914, and have not worked there since. I can name two hotel signs located on Felton Street between 15th and 16th; a sign on 15th Street, opposite the city courthouse; several interior signs at the May Co. on 16th Street.

Witness selects from several photographs and indicates Exhibits "M-3," "M-4," "M-5" and "M-8." I saw the exhibits "M-3" in the store of the May Company on 16th Street. The exhibit "M-4" was in the same store as was Exhibit "M-5." The sign shown in exhibit "M-8" was on 15th St., opposite the City Courthouse. I have been in the shop of the Prismatic Sign Co. on two or three occasions. I saw signs under construction there of the

(Deposition of C. E. Sprague.)

same type that I have described. I can only give the date in a general way; no specific date. It is prior to 1914, covering a period of two or three years.

Mr. GRIFFIN.—Move to have the answer of the witness stricken out, because it shows upon its face that he does not refer to a time two years prior to the filing of the application for the patent in issue here.

A. I know the ordinance of Denver regarding the hanging of signs [183] at that time. Double-faced signs extending over the street could not extend more than six feet from the building line. They necessarily had to be illuminated signs. Single-faced signs could be placed anywhere along the face of the building.

Q. Do you know how this type of sign shown in those photographs is classified?

A. At one time the city ordinances did not cover an interiorly illuminated sign. They required that the sign should be a lamp letter sign or bulb letter sign or exposed lamp letter sign. I do not know when the ordinance was changed.

Cross-examination by Mr. GRIFFIN.

Can you tell me any other signs than the ones you have indicated there as being put up in Denver of this type that you saw?

A. No, I do not remember any at all. The signs in the May Company and the sign opposite the courthouse were put up in about 1911, 1912 or 1913. I cannot place the date any nearer than those three

years. I am working for the Federal Electric Company as a sign salesman and have been so employed since September 16, 1919, and am selling electric signs at the present time. I regard the so-called Flexlume sign sold by the Federal Electric Company as a competitor. Any ordinary electric sign is a competitor of the Flexlume sign where it is interiorly lighted. As far as the dates go, I cannot place the dates of any of the signs that I saw in Denver within three years; not the specific dates.

Mr. TOWNSEND.—We will present to your Honor, under Rule 48, the affidavit of Tracy W. Simpson, which will largely cover the expert features. I will just briefly refer to some of the points. Mr. Simpson will be offered as a witness for cross-examination in addition to giving some fact testimony, just as soon as I have referred to this. [184]

Mr. GRIFFIN.—If your Honor please, it makes it exceedingly difficult for me to cross-examine this witness on a 14-page affidavit just submitted to me.

The COURT.—Does the rule prescribe when this shall be presented?

Mr. TOWNSEND.—It is, technically, at the time the case is at issue. The affidavit was only executed a few moments ago. Mr. Simpson has been carefully compiling it. Of course, I think as the witness reads it through, or as we read it through, you will probably observe that it is like expert affidavits—matters of opinion in regard to patents. The patents are in evidence. If counsel will run

through the affidavit he will quickly see on what points he wants to cross-examine.

Mr. GRIFFIN.—It is not to the affidavit, itself, that I make any objection, but it is to the impossibility of making any adequate cross-examination on a fourteen-page affidavit first submitted to me when the cross-examination is to take place.

The COURT.—Have you any other oral testimony?

Mr. TOWNSEND.—One witness.

Mr. GRIFFIN.—We might go on with the case, and let the cross-examination be had tomorrow morning.

The COURT.—We will complete the case this afternoon, will we?

Mr. GRIFFIN.—As far as we can, your Honor, and then have the cross-examination to-morrow morning.

The COURT.—We will complete it this afternoon, even if we have to examine him orally.

The TOWNSEND.—I will touch the main points in the affidavit.

Mr. Simpson, having qualified both by educational qualifications and from technical experience in engineering, and as the president of the Federal Sign System, he has been with this company since [185] early in 1914 and is familiar with its doings. He analyzes the first Hotchner patent in suit, represented by the drawing. The front of the metal sign is struck out to form a border, and at the same time to form a pocket for the glass to rest in and lie in

the plane of the front. There are two forms, as he points out and refers to as Points 1 and 2. He quotes from the patent to the effect, "The letter construction is the important feature of the present case." He says that pressing, and stamping, and forming in the mechanical arts have a very definite meaning. Pressing is usually done, and it means stamping or drawing in a flat bed machine in which the metal is stretched into various shapes. Then he describes stamping. Then he says that there is a misdescription in the patent. He makes this quotation:

"The sheet of translucent material is not cut out the shape of the letter but covers the entire area defined by the length and breadth of the letter or character. By thus making the sheet of translucent material cover the entire outer area of the character without conforming to the outline of the letter, the cost of manufacture is reduced while the structure is actually stronger." Here are two specimen letters, one in accordance with figures 1 and 2 of the patent, and one in accordance with figures 3 and 4 of the patent. Your Honor will see that the letter is cut out to outline and does not cover the entire back.

The COURT.—These are the Hotchner letters?

Mr. TOWNSEND.—Yes, sir.

The COURT.—Where is the one that it is claimed infringes?

Mr. TOWNSEND.—This is the Federal's device, and I suppose that is one they call an infringement.

You will notice by looking at the back of this—you will see certain physical differences as you look at them from the front.

The COURT.—What is it the plaintiff claims under his patent—the exclusive right to use this?

Mr. TOWNSEND.—Apparently, from the *prima facie* case, they [186] claim any sort of a beveled border as an infringement.

Mr. GRIFFIN.—We claim the right to use any kind of a raised metal molding.

The COURT.—And you claim no one else has a right to use it.

Mr. GRIFFIN.—We claim no one else has the right to use the metal molding in connection with this translucent letter with the illumination in the back of the character.

Mr. TOWNSEND.—The claims do not give them any such protection at all. There was nothing that would entitle such a claim to a patent at the time Mr. Hotchner came into the field.

Now, if your Honor will just turn over the samples and look at the back, you will notice the Federal sign is one piece of glass. If you look at the two samples, you will see that they are cut out in the shape of the letter. That cut-out fashion is the only way you can put the plaintiff's glass letter into a sign and have it conform to his specifications and descriptions. When *we* has described in his specifications that he can use a piece of glass of the maximum breadth and length of the letter—

The COURT.—It seems to me you are going

much further than is necessary and much deeper into the question, in view of the claim made by the plaintiff, that he has the exclusive right to use anything of this kind.

Mr. TOWNSEND.—Yes, I think so, your Honor.

Mr. GRIFFIN.—The claim is not limited to the construction of the glass back, as counsel on the other side has referred to it. It is true that the specification does say something about making the glass back in a certain way, but the claim is not so limited as that.

Mr. TOWNSEND.—Your Honor knows that a claim must be read in connection with the disclosures in the specifications and drawings. The only reason we are going into this this way is to show your Honor exactly what the true facts were. Mr. Simpson goes on to show, your Honor, that except where you have a block letter, like “I,” with no re-entering portions, like the [187] letters “H,” or “C,” or any tie portions, like other letters, that the only way you can make the plaintiff’s patented sign is to cut out his letter to shape the material, the metal material. You can see that counsel’s claim of a raised metal border, being within his patent, brings him immediately within the prior art.

The COURT.—That is the principal question in the case, whether, at this day and age, a man can maintain an exclusive right to use a thing of that kind by a patent.

Mr. TOWNSEND.—He cannot. What Mr. Hotchner has done at the very best, and we want to

give him all he is entitled to, his patent would be for this specific method, of bending it out there and getting—

The COURT.—That proposition is not involved in this case.

Mr. TOWNSEND.—No. We do not do it, and never have. We can very quickly pass over the first patent.

Now, coming to the second patent, he calls attention to the fact that municipalities, as a rule, require—

The COURT.—Have you anything more to illustrate the difference between the two?

Mr. TOWNSEND.—Yes, your Honor. This large one is the defendant's structure, and the smaller one is made according to the second Hotchner patent. This second Hotchner model brings the bottom reflector up into the body of the box, so that a considerable portion of it projects upwardly above the lower portion of the glass sign. So, naturally, a light put in there shining down, will have its rays reflected horizontally out through the glass. Then there is this trough underneath.

The COURT.—That is the portion that he claims is infringed.

Mr. TOWNSEND.—That is the part that he claims is infringed. The first claim has a wording by which the light in the bottom, here, the means by which you do not see that light as you approach it horizontally, that means is the metal part of the shield, itself. [188]

The COURT.—Isn't it the bottom part that it is claimed is infringed, and not the upper part?

Mr. TOWNSEND.—There is an alleged combination, your Honor, but it is nothing but a pure aggregation. It is just as though you had a light up on top of the building, and cast the light into a room, and at the bottom part a light casting its rays down to the sidewalk. It is a combination, they claim.

The COURT.—Two separate lights.

Mr. TOWNSEND.—Two separate lights, with no co-action.

The COURT.—What I want to know is just what the plaintiff claims.

Mr. GRIFFIN.—There is a co-operation between that upper reflector—

The COURT.—The light that reflects on the street comes entirely from the bottom light.

Mr. TOWNSEND.—Yes, your Honor. Now, in order to work out a so-called combination, by bringing this reflector upward from the bottom—

The COURT.—You have not that combination at all.

Mr. TOWNSEND.—We have not. We have only the ordinary function of an underneath light casting on the sidewalk. The box or trough that shields that projects only a short distance up into the box, and not up into the glass letter, at all. There is no reflected action within the box at all. So you have not that sort of a combination, or aggregation, or whatever you want to call it.

That represents the physical differences. It is

pointed out by Mr. Simpson in his affidavit, and he will identify these models when he takes the stand; he points out that it was common in certain municipalities, for instance, Seattle has an ordinance which was enacted as early as August 8, 1909, in which it was required that electric signs made entirely of galvanized iron letters formed on each side of the sign, of a certain size, illuminated from the inside, with not less than 200 candlepower [189] to each sign, and more if the size of the sign shall require, with the bottom of the sign left open to illuminate the sidewalk, will be allowed to be constructed as provided. He refers then to other patents, and analyzes those and shows their application.

Now, as Mr. Simpson takes the stand, he will identify the —

Deposition of Tracy W. Simpson, for Defendant.

Defendant thereupon called TRACY W. SIMPSON, who testified as follows:

My name is Tracy W. Simpson. My age is 35 years. I am a resident of Berkeley, and at the present time vice-president and Western District Manager of the Federal Electric Company, a California corporation. I have been with the Federal Electric Co. since August, 1914.

Q. Will you please describe briefly some of the types of electric signs which your company manufactures?

Mr. GRIFFIN.—I object to this question unless

(Deposition of Tracy W. Simpson.)

it is shown that this particular question has to do with some issue here.

The COURT.—I presume it has.

Mr. LOFTUS.—That is only preliminary to laying a foundation.

The COURT.—I think the question is too broad; that might include a lot of things that have nothing to do with this case.

Mr. LOFTUS.—Q. Does your company make interior-lighted signs?

A. Yes, sir.

Q. Will you describe the construction of those, briefly?

The COURT.—Are these the ones you have here?

Mr. LOFTUS.—Some of them.

A. The earliest form of interior-lighted sign that was constructed comprised a box-like structure with lights on the inside, the front portion of the box cut out into the shape of the character, and that front portion backed up by some translucent material. Then, as the desire for embellishment became evident, we made additions to that plain, simple, transparent [190] cut-out sign. Those embellishments consisted of various things attached to the face of the sign. There would be strips of molding on the top edge of the sign, or the lower edge of the sign, or around the letter. Furthermore, due to the desire to confine the light in order to make certain that the light would follow a direction approximately horizontal to the sidewalk, we adopted the practice

(Deposition of Tracy W. Simpson.)

of placing channels around the letter. Those channels—

Mr. GRIFFIN.—If your Honor please, I object to all this answer and move that it be stricken out as not responsive to any issue in this case. This patent application was filed more than seven years ago, and is a very old application. It is very material in this case that whatever is testified to here be at a fixed time, that is, the time before that application was made.

The COURT.—I think that is correct.

Mr. LOFTUS.—This is just to show the origin and development of the construction, your Honor. Just proceed very briefly, Mr. Simpson.

A. (Continuing.) This little bit of history is taken, really, from the records of the company, and dates back a great many years, and does not in any way apply to me in personal experience, although I have, in my present experience, gone through all of the evolution which I have just described. So the idea of placing a small channel around such transparent letter was nothing more or less than a forerunner of these various embellishing borders. Then with certain types of letters it became desirable to place this channel or troughing around the letter in an easy and simple way, so we conceived the idea of bending them up out of lead, lead being a ductile metal and easily bent by the workmen, and it was very economical to place those channels or borders around the edges of the letter. That lead was manufactured in the same way that lead pipe

(Deposition of Tracy W. Simpson.)

is manufactured, by a process known in the mechanical arts as extruding. The lead [191] which I have just described was used by us in the manufacture of the Normal Pharmacy sign which is complained of—

Mr. GRIFFIN.—I have another objection, the witness stated that much that he was testifying to he had no personal knowledge of; that is an additional reason for striking out his answer. He has testified that he had no personal knowledge of the history that he was talking of.

Mr. TOWNSEND.—I think your statement is too broad.

The COURT.—If you are correct in that, the testimony is incompetent. I didn't so understand the witness, though.

Q. Are you testifying from company records, or of your own knowledge?

A. In my position I have access to the company records for a great many years back.

Q. Are you testifying from company records, or from your own knowledge?

A. I am testifying as to both.

The COURT.—You cannot testify from the records.

A. (Continuing.) I have been with the company since 1914, but previous to that time I lived in Chicago and was quite familiar with the work the company was doing, because I was in an interrelated line.

(Deposition of Tracy W. Simpson.)

The COURT.—Confine yourself to matters within your own knowledge.

Mr. GRIFFIN.—There is an additional reason why this should be stricken out. He has testified that he was with this company since 1914, and all of this relates to matter prior to 1914.

Mr. TOWNSEND.—Just let him explain the matter, and he will cover it all.

Mr. LOFTUS.—Q. You testified that your company manufactured an interior-lighted sign, with a plane face, that is, one without a molding; have you a sample or model of such a letter here, and if so, produce it? A. Yes.

Q. Is this the letter you refer to? A. Yes.

Mr. LOFTUS.—I offer it in evidence. [192]

The COURT.—Q. When was this manufactured?

A. This was manufactured recently, it is just merely a sample.

Q. When did your company use that kind of a letter?

A. Ever since I have been with it, and, to my personal knowledge, I have seen products of this company as long ago as 1909.

The COURT.—It will be admitted.

Mr. LOFTUS.—I think counsel will not make any contention that this is an infringement.

The COURT.—It is entirely too late now to get a patent on the alphabet.

Mr. GRIFFIN.—I object to this exhibit, and to any answer as not bearing on any issue in this case.

(Deposition of Tracy W. Simpson.)

We are not concerned with any flat letters of this character.

Mr. LOFTUS.—We are using this merely to show the development of this matter.

The COURT.—I think he has sufficiently developed it. The use of letters for advertising purposes is older than I am.

Mr. TOWNSEND.—Mr. Griffin, would you contend that this Exhibit “T” just referred to by witness infringes either of the patents in suit?

Mr. GRIFFIN.—I say it does not. I say it has no bearing on any issue in this case.

Mr. TOWNSEND.—That is all right.

(The model was here marked Defendant’s Exhibit “T.”)

Mr. LOFTUS.—Q. You also mention the use of a channel. Can you illustrate to the Court the manner in which such a channel is applied to a letter of this type?

A. We produced channels or strips of metal separately constructed of sheet steel or other similar material, and bent it in the form of a right angle, somewhat as appearing on the sample in my hand, and placed it around the periphery or perimeter of this letter, in order to create a trough or a channel completely surrounding the letter. [193]

Q. You also mentioned the use of lead to decorate the border; can you illustrate the manner in which you applied that? A. Yes—

Mr. GRIFFIN.—I object to any question upon this particular subject matter, unless it is shown at

(Deposition of Tracy W. Simpson.)

what time this particular material was used. It is essential to this case that it be proven and the only thing that is essential here is that it be proven that the matters spoken of and proven be at a time prior to two years before the filing date of each of these two patents. We have no dates given whatever, and no time fixed, and no idea as to when this was done.

Mr. LOFTUS.—This is merely offered to illustrate the manner in which these letters were made. We will come to the subject of the prior part in a minute, and we will prove plenty of instances long prior to the Hotchner patent.

The COURT.—Whether you use lead, or wood, or iron, or anything else, is not a matter of invention, it is merely a matter of choice. I don't see the necessity of going into it, myself, but you can make up your own record.

Mr. TOWNSEND.—This lead border he is speaking about is the thing they are complaining about, and I am surprised that counsel does not know when we used lead.

The COURT.—This testimony is only competent if it was anterior to the application by the patentee.

Mr. TOWNSEND.—It is competent to show the practice of the defendant, and the only practice the defendant has ever had.

Mr. LOFTUS.—In any patent case, there must be identity of function to show infringement, and the witness is explaining the function of this border.

A. (Continuing.) I am trying to show how the

(Deposition of Tracy W. Simpson.)

sign which is complained of by the plaintiff was made.

The COURT.—Q. When was it made?

A. It was made about a [194] year ago. It is the sign complained of and upon which we are being sued.

The COURT.—That is admitted here.

Mr. LOFTUS.—Yes, but it does not show the manner of constructing it.

The COURT.—I don't understand that the manner of constructing it is at all material. If you put a piece of an old bootleg around here it would infringe the patent, according to the plaintiff's theory.

Mr. GRIFFIN.—That is not the idea, at all.

The COURT.—What is your idea?

Mr. GRIFFIN.—I am standing on claim 4 as it reads.

The COURT.—I will allow the testimony to go in subject to objection. Proceed.

A. (Continuing.) The lead border, a sample of which I have in my hand, was placed around the periphery of the letter and soldered in place.

Mr. LOFTUS.—Q. This lead that you have just referred to, is this the stock which you use to construct signs having the outline molding at the present time?

A. Yes, that is taken right from our stock-room.

Mr. LOFTUS.—I offer those two strips of lead in evidence, and ask that they be marked Defendant's Exhibit "U."

The COURT.—Admitted.

(Deposition of Tracy W. Simpson.)

(The objects were here marked Defendant's Exhibit "U.")

Mr. LOFTUS.—Q. Have you any models showing the manner in which the lead border and glass is assembled in defendant's construction, and, if so, produce it.

A. Yes.

Q. That correctly illustrates the defendant's construction? A. Yes.

Mr. LOFTUS.—We offer that model in evidence.

Q. Who made it?

A. It was made by several of the men in our [195] shop, under my personal supervision and direction.

Mr. LOFTUS.—We ask that it be marked Defendant's Exhibit "V." (The model was here marked Defendant's Exhibit "V.")

Q. Have you a specimen of letters such as defendant constructs, using lead molding, and if so, produce it. A. Yes.

Q. It is this letter "H"? A. Yes.

Q. Who constructed that?

A. That was constructed by various men in our shop, under my personal supervision.

Q. Does this correctly indicate defendant's construction, such as was used in the Normal Pharmacy sign?

A. It does, with the exception that the sample illustrates a plain block letter, whereas the sign was of a script letter.

(Deposition of Tracy W. Simpson.)

Mr. LOFTUS.—The sample identified by the witness is offered in evidence as Exhibit “W.”

The COURT.—These other two are admitted to be correct samples of plaintiff’s construction?

Mr. GRIFFIN.—Yes, substantially.

The COURT.—And these two are substantially your construction?

Mr. GRIFFIN.—That is one construction; however, it is not the construction we use. This back part—

The COURT.—The back part is not material.

Mr. GRIFFIN.—The back part is not material.

Mr. TOWNSEND.—The construction they use is not according to the patent, your Honor, so it is not material what they do use.

Mr. LOFTUS.—Do you stipulate that these correctly represent the construction shown in the Hotchner 1918 patent, Mr. Griffin?

Mr. GRIFFIN.—They correctly represent some of the construction shown, yes, but they do not represent all of the construction possible under the claims of the patent.

The COURT.—The face of it is correct?

Mr. GRIFFIN.—No, the face is not correct, because the face [196] of it shows separate pieces of glass.

The COURT.—Whether it be one piece or many pieces would not be a matter of invention.

Mr. GRIFFIN.—No, your Honor, but I am asked to stipulate something which I do not care to stipulate.

(Deposition of Tracy W. Simpson.)

The COURT.—The only question in my mind is whether the raised form of letters is the same as you claim the right to make under the first patent.

Mr. GRIFFIN.—Yes, your Honor, the front appearance of those two is substantially the same as the front appearance of the letters made in accordance with the disclosure of the patent.

Mr. LOFTUS.—I will have to interrogate the witness on that if Mr. Griffin contends that those backs can be put in in any other way. I want to show that they cannot be.

The COURT.—I don't understand that the back is involved here at all. I may be in error.

Mr. LOFTUS.—It is the necessary construction in order to get the glass into that pocket.

Mr. GRIFFIN.—That is not the fact.

Mr. TOWNSEND.—That is covered, your Honor, by the expert's affidavit.

Mr. GRIFFIN.—The patent speaks for itself.

The COURT.—I am not an expert on patents, but it seems to me we are getting away beyond the actual point in controversy in this case.

Mr. LOFTUS.—Q. Have you read, and do you understand the construction shown in the Hotchner patent of March 12, 1918, here in suit? A. Yes.

Q. Have you made a model of any or all of the forms shown and described therein?

A. Yes, I have made a model of both forms.

Q. I hand you a model here which is labeled Hotchner patent [197] 1259237, Figures 1 and 2, and ask you if you are familiar with it?

(Deposition of Tracy W. Simpson.)

A. Yes, sir.

Q. And you made that model?

A. It was made by various men in our shop under my supervision.

Q. Does that correctly represent any one of the constructions shown in the Hotchner patent referred to?

A. It represents the construction illustrated in Figures 1 and 2.

Mr. LOFTUS.—I offer that sample letter in evidence.

The COURT.—Admitted.

(The sample letter was here marked Defendant's Exhibit "X.")

Mr. LOFTUS.—Q. I hand you another sample, labeled "Hotchner patent 1259237, Figures 3 and 4," and ask you if you are familiar with the same?

A. Yes, I am familiar with it.

Q. And you made that model from the sample?

A. It was made by various men in our shop, under my supervision.

Q. Does that represent any of the construction shown in the Hotchner patent referred to?

A. Yes; figures 3 and 4 of the Hotchner patent of 1918 illustrate a block letter "I," built in a peculiar way, in which there is an extra position—or, I would say depression surrounding the outline of the letter. This is the letter "H" produced in the same manner as the letter "I" illustrated in the patent Figures 3 and 4.

Mr. LOFTUS.—I offer this sample in evidence.

(Deposition of Tracy W. Simpson.)

The COURT.—Admitted.

(The sample was here marked Defendant's Exhibit "Y.")

Mr. LOFTUS.—Q. Have you any detail model showing the construction of the Hotchner patent 1259237? A. Yes, sir.

Q. I hand you a detailed model marked "Hotchner patent 1259237," Figures 1 and 2, and ask you if you are familiar with it?

A. Yes, I am familiar with this.

Q. By whom was that made?

A. It was made in our shop by various men, under my supervision.

Q. Does that represent any of the structures shown in the Hotchner [198] patent referred to?

A. Yes, it represents an enlarged detail or piece of a corner of the border made of metal somewhat thicker than we would ordinarily use in practice, in order to illustrate the relative disposition of the component parts.

Mr. LOFTUS.—I offer that model in evidence.

The COURT.—Admitted.

(The model was here marked Defendant's Exhibit "Z.")

Mr. LOFTUS.—Q. I hand you another detailed model labeled, "Detail, Hotchner patent 1259237, figures 3 and 4," and ask you if you are familiar with it? A. Yes, I am familiar with this.

Q. Does that represent any of the structures shown in the Hotchner patent? A. Yes, sir.

Q. Which form?

(Deposition of Tracy W. Simpson.)

A. It represents an enlarged detail of the particular construction illustrated in figures 3 and 4 of Hotchner's patent, the detail applying only to the border.

Mr. LOFTUS.—I offer the model in evidence.

The COURT.—Admitted.

(The model was here marked Defendant's Exhibit "AA.")

Mr. LOFTUS.—Q. Have you read and do you understand the structures shown and described in United States patent 32195, to Little, referred to in your affidavit which has been offered here in evidence? A. Yes, sir.

Q. Have you a model of that construction?

A. Yes, sir.

The COURT.—What is the date of that patent?

Mr. LOFTUS.—That was 1861, your Honor; a copy of that patent is here in evidence.

Q. I hand you a model bearing the legend, "Little patent, 32195," and ask you if you are familiar with that model? A. Yes, it was made in our shop.

Q. Under whose supervision? A. Mine.

Q. Does it correctly represent the structure shown in the Little patent?

A. Yes, with the exception that we have placed on the back of the wooden background of the model a little sheet [199] metal in order that the model may be placed in a frame similar to the other models which were made at the same time. That explains the little sharp edge which does not show in the Little sign.

(Deposition of Tracy W. Simpson.)

Q. Does that piece of metal that you just referred to change or alter the alteration of that construction? A. No, sir, in no way whatever.

Mr. LOFTUS.—I offer that in evidence.

The COURT.—Admitted.

(The model was here marked Defendants' Exhibit "BB.")

Mr. LOFTUS.—Q. Have you read and do you understand the French patent to Boldes, 335943, referred to in your affidavit?

A. Yes, I read it and understand it; I have read a translation of it.

Q. Have you made a model of the structure shown and described in that patent? A. Yes, sir.

Q. I hand you a model so labeled, and ask you if you are familiar with the same.

A. This is the model we made, and I am familiar with it.

Q. Does that correctly represent the construction shown and described in the French patent referred to?

A. Yes, sir. There are several alternative constructions which may be derived from an inspection of the French patent; the border, which, for convenience, I have placed here in the form of a wooden border, may be metal. The background, which I have made opaque by painting very thick paint over a glass surface blackground, according to the patent, may be made opaque by any other suitable means, such as by placing metal over it, or tinfoil, or something of that sort.

(Deposition of Tracy W. Simpson.)

Mr. LOFTUS.—I offer the model in evidence.

The COURT.—Admitted.

(The model was here marked Defendants Exhibit "CC.") [200]

Mr. LOFTUS.—Q. Have you read and do you understand the construction shown and described in the Hotchner patent 769139 of August, 1904?

A. Yes, I am familiar with it.

Q. Have you made a model of any of the structures shown and described in that patent?

A. I have.

Q. I hand you a model, and ask you if you are familiar with the same?

A. I am familiar with it; it was made under my supervision in our shop.

Q. Does that correctly illustrate any of the structures shown in the said Hotchner patent of 1904?

A. Yes, it represents one of the constructions.

Q. Which one?

A. The construction illustrated in Figure 7.

Mr. LOFTUS.—I offer the model in evidence.

The COURT.—Admitted.

(The model was here marked Defendants' Exhibit "DD.")

The COURT.—Wherein does that differ from the structure of 1918?

Mr. LOFTUS.—That is what we would like to know, your Honor. It uses wire gauze instead of glass, and wood instead of metal.

Q. Does your company make any provision in connection with its electric signs for illuminating the sidewalk? A. Yes, sir.

(Deposition of Tracy W. Simpson.)

Q. Have you a model illustrating the provision which you have made for thus illuminating the sidewalk, and, if so, will you produce it?

A. Yes, I have such a model here.

Q. Does that illustrate the construction of the sign complained of herein, and which is shown in plaintiff's photograph exhibits 5, 6 and 7?

A. Yes, it illustrates the construction exactly or substantially.

Q. What is the function of the trough-shaped reflector in the bottom of that flame?

A. The function of the trough-shaped reflector is purely to throw the light downward onto the sidewalk. [201] It is in no way whatever of use in connection with the interior illumination of the sign, or the illumination of characters on the side of the sign.

Q. Why wouldn't it reflect any light from the interior?

A. There are two reasons why no light could be reflected from the lower reflector onto the characters of the sign; the first reason is that we have been careful to provide sufficient lamps behind the characters, providing usually one at the top of the character and one at the bottom, so that the lights provide all of the illumination necessary for the character, both top and bottom. Another reason is that the lower reflector is so far down in the body of the sign, so far away from the upper portion of the sign that by no possible chance could the light

(Deposition of Tracy W. Simpson.)

be reflected backwards to illuminate the lower portion of the characters on the side.

Mr. LOFTUS.—I offer this model in evidence.

The COURT.—Admitted.

(The model was here marked Defendants' Exhibit "EE.")

Mr. LOFTUS.—Q. Have you made a drawing or diagram illustrating the direction which the light rays would take from the back side of the trough-shaped member?

A. Yes, I have such a drawing.

Q. You have handed me a drawing here marked "Defendant's structure"; under whose direction was that drawing made?

A. This drawing was made under my direction.

Q. Does that model correctly illustrate the direction of the light rays emanating from the inside lips?

A. It does. This drawing is a correct representation to scale of the Normal Pharmacy sign. It is a sectional view.

Q. The red lines represent what?

A. The red lines represent rays of light coming from the centers of the filaments of the two incandescent lamps; it will be observed that these red lines [202] are shown to impinge the lower reflector and under the well-known optical principle that the angle of incidence must always equal the angle of reflection it will be seen that there is no possible way by which light may be reflected from the upper side back upward into the body of the

(Deposition of Tracy W. Simpson.)

sign, and in no way assist in lighting the characters on the side of the sign. Those light rays dissipate themselves on the lower crevices of the body.

Mr. LOFTUS.—I offer that in evidence.

(The drawing was here marked Defendants' Exhibit "FF.")

Q. Does the presence of that trough-shaped member at the bottom affect in any way the light on the letters in the sign above?

A. No, sir, it is entirely independent.

The COURT.—I think that is self-evident.

A. (Continuing.) If one were to draw an imaginary line, he would have in the upper part an electric sign, just the same as if it had been made in Seattle under the Seattle ordinance, and in the lower part he would have a border or strip of light, which is notoriously old.

Q. Have you read and do you understand the structure described in the second Hotchner patent in suit, 1315187, of September 2, 1919?

A. Yes, I have read it and understand it.

Q. Have you constructed or caused to be constructed a model illustrating any of the forms of that patent? A. Yes.

Q. I hand you a model of the letter "E," and ask you if you are familiar with the same?

A. Yes; this model was made under my supervision, in our shops, and illustrates the construction disclosed in the patent.

Q. In the second Hotchner patent?

A. In the second Hotchner patent, 1919.

(Deposition of Tracy W. Simpson.)

Q. What is the function of that trough-shaped member in the bottom of the box?

A. It has a double function; it has the upper part finished with reflecting paint, or in any other way made [203] reflecting, and is beveled so that the light from the upper lamp going downwards impinges against the reflector, and, acting on the optical principle that the angle of incidence equals the angle of reflection, is reflected in approximately a horizontal direction, and assists in the illumination of the bottom portion of the character.

Q. As I understand it, there is but one light on the inside of the box?

A. That is all that is disclosed in the patent.

Q. And in the model, exhibit "EE," which represents the defendant's construction, how many lights are employed on the inside of the box, customarily?

A. There are two lights employed in the model and customarily in commercial construction there would be two lights in all cases except where the letters on the face of the sign are exceedingly small, in which case one light would be sufficient to illuminate it completely.

Mr. LOFTUS.—I offer the model last identified by the witness in evidence.

The COURT.—Admitted.

(The model was here marked Defendants' Exhibit "GG.")

Mr. GRIFFIN.—If your Honor please, I have a gentleman here from the Board of Public Works. I would like to have him identify an application

(Deposition of Tracy W. Simpson.)

for a permit under which the other sign was erected, and let him go back to his work.

The COURT.—Submit it to counsel on the other side, and they will probably agree that that is a copy.

Mr. TOWNSEND.—Yes, your Honor.

Mr. GRIFFIN.—All right, if it is agreed that this is a copy.

Mr. TOWNSEND.—We just reserve the objection that it is immaterial, irrevelant and incompetent.

The COURT.—In view of your admissions here, it is utterly immaterial, because I do not think it is necessary you should bother with it, because they admit infringement, if it is infringement.

Mr. GRIFFIN.—Then I will ask you to have this identified as the copy of the application for a permit under which the other sign [204] was erected.

The COURT.—Very well.

(The document was here marked, Plaintiff's Exhibit 8.)

Mr. LOFTUS.—That is all for the present.

Mr. TOWNSEND.—We ask that the affidavit of Mr. Simpson be copied into the record at this point.

The COURT.—Very well; counsel can cross-examine the witness now.

(The affidavit referred to is as follows:)

“In the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 577.

“JOSEPH HOTCHNER,

Plaintiff,

vs.

“FEDERAL SIGN SYSTEM ELECTRIC, a Corporation, and TRACY W. SIMPSON, Doing Business as FEDERAL ELECTRIC COMPANY,

Defendants.

“Affidavit of Tracy W. Simpson.

“State of California,—ss.

“I, TRACY W. SIMPSON, being duly sworn, depose and say: I am a resident of Berkeley, County of Alameda, State of California; I am at present vice-president and Western District Manager of Federal Electric Company, a corporation organized under the laws of the State of California, and having a place of business in the City and County of San Francisco, State of California, and engaged in the business of manufacturing, selling and installing electric signs and other electrical apparatus.

“I am a graduate of the Hyde Park High School of Chicago, after which I spent one year in the University of Chicago, and thereafter three years in the Armour Institute of Technology, Chicago, graduating from the last-named college as a Bachelor of

Science in Electrical Engineering. In 1909 I entered the [205] employ of the International Harvester Company of Chicago, Illinois, in the Mechanical Department, where I remained for three and one-half years in various capacities, including Master Mechanic of one of the plants and Supervisors of Factory Methods. Following my services with the International Harvester Company I became Superintendent of the Chicago factory of the Hot Point Electric Heating Company where I remained for about one year. In August, 1914, I became Assistant Superintendent of the main Chicago factory of the Federal Electric Company, where I had charge of development work and had occasion to take various ideas coming from inventors and others and convert them into practical devices. In April, 1915, I came to San Francisco as Vice-President and Western District Manager of the Federal Electric Company where I now have entire charge of three factories, one at Emeryville, California, one at Seattle, Washington, and one at San Francisco, California. In the course of my duties as above referred to I have had occasion frequently to consider patents and am familiar with the reading of drawings and patent specifications.

“I have read and understand the device illustrated and described in Hotchner patent No. 1,259,237, dated March 12th, 1918. It belongs to the general class of interiorly lighted signs which had their origin as far back as 1861, one such being shown in the United States Patent to Little, No. 1,191, dated April 30th, 1861. For convenience I

shall refer to this Hotchner patent as the Hotchner patent of 1918. It comprises a box-like frame of sheet metal construction having a front part 10 cut away in the shape of the desired letter, the cut-away being pressed outwardly to form a raised border 11 outlining the letter. A pocket or recess is formed in the sheet metal front so that a sheet of glass 13 or other transparent or translucent material cut in the exact shape of the letter can be inserted therein so that it will lie in the plane of the sheet metal front 10, or, in other words, in line with the [206] sheet metal front. The pockets or recesses are formed in one of two ways; first, as shown in Figs. 1 and 2 where the base and inturned end 12 of the border itself forms the pocket; or, as shown in Figs. 3 and 4, where a separate pocket 21 is formed adjacent the base of the border. In either case the glass must be cut in the exact shape of the desired letter in order to enter said pocket. The provision of a pocket or recess, as illustrated and described, affords a support for the perimeter of the glass.

“Referring to the patent specifications, the patentee says (page 1, beginning line 41):

* * * ‘the letter construction is the important feature of the present case.’

“The patentee then goes on to state that this letter construction of his consists in so acting upon a sheet of metal as to press outwardly therefrom a molding ‘having an outwardly flare surface at 12, which molding will have the shape of the desired letter.’ It is thus to be seen that the letter, or the

molding defining the latter or border, is produced by *pressure*, presumably by a metal press or die.

“Continuing the patentee says (page 1, lines 51 to 57):

“ ‘This molding is *pressed* outwardly far enough so that a suitable sheet of translucent material 13 may be inserted under the molding and is held in place in the *plane of the sheet metal front* 10 by strips of sheet metal 14, soldered or otherwise secured to the inside of the front 10.’

“In the mechanical arts ‘pressing’ means ‘stamping’ or drawing in a flat bed machine, in which the metal is stretched into various shapes, whereas by the process of ‘forming’ we mean ‘bending’ or ‘shaping’ without necessarily producing stretching or drawing of the metal, but merely the bending of same. From this viewpoint the Hotchner border could be [207] produced only by ‘pressing’ in a drawing press or ‘forming’ by special tools out of the sheet metal constituting the front of the sign.

“Following the above statement of letter construction, there appears this misdescription (page 1, lines 62 to 71):

“ ‘The sheet of translucent material is not cut out the shape of the letter but covers the entire area defined by the length and breadth of the letter or character. By thus making the sheet of translucent material cover the entire outer area of the character without conforming to the outline of the letter, the cost of manufacture is reduced while the structure is actually stronger.’

“The same thought finds expression in claim 4 of the Hotchner patent:

“4. A sign comprising a sheet metal body with a raised molding formed therein to define a character, a sheet of translucent material covering the entire area of the space bounded by the greatest length and breadth of the letter back of the same, the edges of the molding toward the center of the elements of the letter lying substantially in contact with the translucent material, and means to illuminate the translucent material and through which the light shines.’

“The language thus quoted is quite clear in its intent, but it finds no justification in or application to a structure in which the ‘molding is pressed outwardly far enough so that a suitable sheet of translucent material 13 may be inserted under the molding and is held in place in the plane of the sheet metal front 10.’ (Hotchner specifications page 1, lines 51 to 55.)

“It is true that in Figs. 3 and 4 the patentee shows a modification of the Block Letter I, in which there is a raised portion 21 around the letter equal to the thickness of the translucent or transparent plate 22 to receive the letter so that it may approximately lie ‘in the plane of the metal front.’ [208]

“Except where a single *Block Letter I* or a like solid rectangular character is used, it is mechanically impossible, according to the construction shown and the description in plaintiff’s patent, to use a sheet of translucent material lying ‘in the plane of the metal front,’ which need *not* be cut out to the shape of the letter, and, at the same time, may cover ‘the entire area defined by the length and

breadth of the letter.' (Hotchner patent, page 1, lines 62-65). It is well known that every letter of the alphabet, except I, is either re-entrant, like the letters H, E, F, G, M, etc., or contain centers like the letters R, O, A, B, P, etc., which centers must be supported. In either case the re-entrant portions or the center portions absolutely prevent the use of a plane, rectangular sheet of glass, which at the same time is to lie in the 'plane of the metal' from which the molding is stamped.

"The only way that the glass could lie 'in the plane of the metal' from which the border is stamped would be for the glass to be cut out, before being assembled into the sign, into a shape exactly like the letter, and this applies equally to a construction according to Figs. 1 and 2 or Figs. 3 and 4 of the Hotchner patent. As a matter of fact in an effort to reconcile the description in the Hotchner patent above quoted (page 1, lines 62 and 71) with the rest of the Hotchner patent specifications and drawings, I did considerable experimental work in an effort to produce a sign in which the translucent material was not cut to the shape of the letter 'but covers the entire area defined by the length and breadth of the letter or character' and at the same time had the sheet of translucent material 'in the plane of the sheet metal front,' and it proved to be an impossibility; the only exception being where the Figure was a true rectangle like the Block Letter I or a rectangular hyphen.

"It, therefore, is seen that any reference in the specification [209] to the use of a sheet of trans-

lucent material not cut out to the shape of the letter but of an area corresponding to the length and breadth of the letter is not only erroneous but inconsistent with the rest of the Hotchner specification and with the drawings, except with respect to the single character which may be called a Block Letter I.

“Your affiant has examined a certified copy of the file wrapper and contents of the Hotchner patent of 1918 and finds that the above quoted statement from lines 62 to 71, page 1, was not a part of the original application as filed by Hotchner but was inserted by subsequent amendment.

“I have also examined the prior art set up in the Answer of the Defendants in this suit, and particularly the United States patent to Little, No. 32,195, of August 30th, 1861; United States patent to Hotchner, No. 769,139 of August 30th, 1904; French patent to Boldes, No. 335,943, of September 17th, 1903; the Prismatic Sign Company prior use; the Oregon Hotel prior use and the White Sewing Machine installation in Los Angeles, California.

“Comparing now the structure shown and described in the United States patent to Little, No. 32,195, with the construction shown and described in the Hotchner 1918 patent in suit, I find that Little makes use of a box-like frame made of sheet metal. The front of the frame, which Little calls the ‘sign board’ is shown as being made of wood. This front is cut away to form the desired letters. The borders of the letters are beveled and finished to give the effect of an outline moulding. A blank

sheet of glass or other translucent material is placed behind the front to allow the light to shine through. I have constructed a model of this Little sign and the result and effect, so far as lighting and appearance are concerned, are identical with that derived from the device shown and described in the Hotchner 1918 patent in suit. An optional method of forming the letter is [210] mentioned in the Little specification as follows: 'Instead of forming the flaring letters by beveling the edges of the sign board, the letters may each be made of metal, cast with these beveled edges and with flanges projecting from their flaring edges.' Such instructions would be sufficient to enable one skilled in the art to produce a sign substantially identical with the Hotchner patent of 1918 not only in appearance and effect, but likewise in mechanical construction. In fact, even lacking the alternative description of the Little patent, the skilled artisan of to-day would employ metal instead of wood for the front of the sign on account of greater ease in cutting and shaping the metal.

"Turning now to the construction shown and described in the Hotchner patent, No. 769,139 of August 30th, 1904, it will be noted that it pertains to an interior-lighted sign. A box-like frame is used having a front of 'wood or any other suitable material (lines 81-83, page 1, Hotchner specifications). A beveled border is placed upon the front in the outline of the desired letter. In Fig. 7 the front is shown as being constructed of wire gauze, which is filled in around the border in any desired

way but left transparent within the borders of the letters. The construction shown and described in Fig. 7 of this Hotchner patent of 1904 is substantially like the White Sewing Machine Agency installation shown in Defendants' Exhibits from Los Angeles, which I have actually seen in practice. I have also constructed a sign in accordance with Fig. 7 of said Hotchner patent of 1904 and found that it has substantially the same lighting effect that is obtained by the Hotchner 1918 patent, particularly when the two are viewed from the distance from which these signs are usually seen. In this connection I do not consider that the substitution of glass for wire gauze or a metal moulding for a wooden moulding involves anything more than mere mechanical skill or the judicious selection of materials. [211] Within my experience I have known of municipalities which passed ordinances prohibiting the use of glass in electric signs of this character on account of the danger of breakage and the likelihood of injury to pedestrians passing beneath. In those municipalities it thereupon became the custom to substitute wire gauze for glass. Likewise, in the case of the wooden outline moulding some of the cities have passed ordinances prohibiting the use of wood on or in connection with electric signs of this character. In those instances the only remaining choice was to employ metal in place of the wooden moulding.

"I have also examined the drawings of the French patent to Boldes, No. 335,943, and read a translation of the specifications of said patent.

The device disclosed is an interiorly lighted employing a box-like frame, the front of which is formed of a 'translucent or transparent plate of glass, celluloid, etc.' That part of the front surrounding the letters is made opaque in any desired way, and around the border of each letter is placed an outline moulding of 'metal, wood or any material.' I have constructed a full-sized sign in accordance with this disclosure and operated the same. The appearance of the sign and the lighting effect produced are substantially identical with the Hotchner patent of 1918.

"In regard to the prior use of the Prismatic Sign Company of Denver, Colorado, disclosed in Defendants' Exhibit M12 and A6, I have long been familiar with the construction and operation of the same. This so-called 'Prismatic Sign' has a box-like frame of sheet metal. The sheet metal front of the sign is cut away in the shape of the desired letter and around the border of each letter is placed a raised beveled border of metal. Behind the front wall is placed a blank sheet of glass covering the entire area of the space bounded by the greatest length and breadth of the letter. I regard this sign as the full equivalent of that shown and described in the Hotchner patent of 1918 both in [212] construction and operation. The only differences have to do with the use by Hotchner of a pocket or recess for the glass and the fact that Hotchner forms his moulding integral with the front wall of the frame. These differences, however have to do with details of construction which do

not affect in any way the appearance or operation of the sign.

“I have also seen the actual sign on Hotel Oregon, in Portland, Oregon, and which is shown in Defendants’ Exhibits from Portland, and am familiar with its construction and operation. It has a box-like frame formed of sheet metal. The sheet metal front of the sign is cut away in the shape of the desired letter. Around the border of each letter is placed a raised moulding of sheet metal soldered thereon. Behind the front wall is placed a blank sheet of glass covering the entire area of the space bounded by the greatest length and breadth of the letter. The lighting effect of this sign and the general appearance of the same are identical with the construction shown in the Hotchner 1918 patent. The differences are of a minor character and have to do with the shape of the outline moulding. The Hotel Oregon sign, while having a beveled element in the moulding, is not beveled in exactly the same manner as is shown in the Hotchner 1918 patent, but such differences are not noticeable to the eye when viewed from the usual distance at which the sign is observed.

“I am of course familiar with the interior-lighted signs put out by defendants and complained of in this suit, one such being shown in evidence. This sign employs a box-like frame of sheet metal. Its front is cut away to form the desired letter and a moulding is provided for the border of the letter, but such moulding is not ‘pressed from’ the sheet metal of the front wall, nor is it ‘formed therein.’

Rather, it is composed of a different material, such as lead, separately attached to the sheet metal front. A blank sheet of glass *not cut to the shape* of the letter is placed back of the sheet metal front and held in [213] place at its perimeter by means of clips. This glass therefore is *not* 'in the plane' of the metal front nor in line therewith, there being no pocket or recess of any kind whereby to bring the glass into line with, or into the plane of, the sheet metal front.

"So far as mechanical construction is concerned, there is a closer resemblance between defendants' structure and the structure represented by the Little patent, the Hotel Oregon prior use and the Prismatic Sign Company prior use, discussed above, than there is between defendants' structure and that shown and described in the Hotchner 1918 patent. This is true for the reason that the prior art devices referred to above all make use of blank sheets of glass or other translucent material not cut to the shape of the letter and not lying in a pocket or recess formed in the front wall of the sign, and all have outline moldings not pressed from, or found in, the sheet metal front. In fact, as between defendants' structure and the Prismatic Sign Company prior use, above referred to, I am unable to detect any mechanical differences worthy of mention.

"The principal differences between defendants' structure and the construction shown and described in the Hotchner 1918 patent can be summed up as follows:

“(1) Hotchner has a sheet of glass or other translucent material so arranged that the geometric plane of its back surface is coincident with the geometric plane of the back surface of the sheet metal front wall. In other words, Hotchner provides a pocket or recess for the glass or other translucent material so as to bring the glass into line with the wall of the sheet metal front and provide perimetric support for the same. Necessarily, therefore, Hotchner must employ a sheet of glass cut to the shape of the letter. Glass had been supported in almost every conceivable way previously. In fact, the distinguishing [214] feature of Hotchner is in the peculiar way that he cuts and bends his metal front so that in the one operation of cutting and bending he forms a letter and the beveled border and also a support for the letter. Defendants, on the other hand, have no pocket or recess for the glass, nor do they arrange the glass or other translucent material so that the plane of its back surface is coincident with the plane of the back surface of the sheet metal front wall. Therefore, they are enabled to make use of a blank sheet of glass which lies flat against the back of the sheet metal front wall and in a different plane therefrom. In place of the pocket or recess to support the perimeter of the glass, they make use of clips. It was common practice at the time of the Hotchner invention to support a piece of glass against a metal backing by means of clips or pieces of metal just as defendants and every other manufacturer of electric signs are and have been doing

for many years before the Hotchner application for patent in suit was filed.

“(2) Hotchner has a molding pressed from, or formed in, the sheet metal body, that is, he forms his molding integral with the sheet metal front wall by pressing it therefrom. Defendants use a molding of different material, such as lead, and solder it in place on the sheet metal body. Defendants’ use of a lead molding which can be bent and cut at will and then soldered or otherwise attached to the plain metal back and a separate attachment thereto of the lead molding naturally suggests the use of the separately attached moldings of the prior art. The use of a plain metallic front by defendants in which the letters have been merely cut out and leaving the sheet metal body without any forming or pressing of the molding is entirely foreign to the Hotchner method of pressing or forming the molding for the letter out of the sheet metal body itself and is not an equivalent.

“(3) Hotchner has an outwardly flaring bevel for his molding, [215] that is, a bevel molding which slopes outwardly from the margin of the letter. Defendants have an inwardly flaring bevel molding, that is, a molding which slopes inwardly from the margin of the letter. This difference in flare of the molding of bevels is something more than a mere matter of taste and design. Hotchner has no choice as to the way his bevels should be if he is to follow the instructions of his patent, which are to stamp his letter and his holding out of the sheet metal body and maintain the parts integral

and at the same time form a peripheral support for the sheet of glass to fit into the metal, as well as to accomplish the additional function of bringing the free edge of the molding into contact with the glass and thereby give support to the front of the glass. If he is to perform these functions, then we must bevel it in the way he shows and describes it. Hotchner's beveled integral molding is his sole support for the front of the glass, while the bent edges of the molding form the perimetric support for the glass. Defendants' molding is not a support in any sense for the glass, because the glass is simply pressed back against the back of the metal body. Defendants' molding is merely a matter of embellishment.

"I have likewise read and understand the construction shown and described in Hotchner patent No. 1,315,187 of September 2d, 1919, which, for convenience, will be referred to herein as the Hotchner 1919 patent. It belongs to the class of interlighted signs, and, so far as the sign proper is concerned, it consists of a box-like frame having its front cut away in the form of the desired character and a glass placed behind the cutaway portion to allow the light from within to shine through. The bottom of the box-like frame has a trough-shaped double reflector projecting upwardly within the frame. This trough-shaped member encloses one or more lamps at its under side, and the sign proper carries its own lamps at the top for illuminating the transparent character at the side. Both sides of the trough-shaped bottom member are

given reflecting surfaces, and this [216] trough-shaped member extends so far upwardly within the box-like frame as to cause the light from the upper lamp to be reflected out through the transparent character in the side of the sign. In addition, the trough-shaped reflector will direct the rays from the bottom lamp down to the sidewalk. The patent shows an alternative form, where a second sign is suspended from the main sign. This second sign will be illuminated by the lamp in the bottom of the trough-shaped reflector. Since, however, the sidewalk illumination will thus be interfered with a third lamp is positioned below the second sign.

“Various municipalities have for a long time had ordinances requiring sidewalk illumination in connection with all electric signs, and particularly signs of the interior-lighted type. This is especially true of Seattle, Washington, and Los Angeles, California, in the territory where the company of which I am Vice-president and Western District Manager operates. For instance, Ordinance No. 21308 of the City of Seattle, Washington, which has been in effect since August 8th, 1909, has at all times required that:

“‘Electric signs made entirely of galvanized iron, letters forms on each side of the sign, with one (1) and two(2) inch glass screw lenses, the two inch lenses with not less than a four (4) inch center, apart, and the one inch lens not less than a two (2) inch center, apart, illuminated from the inside with not less than two hundred (200) candle power to each sign, and more, if the size of the sign

shall require, bottom of sign left open to illuminate the sidewalk; will be allowed to be constructed and hung as provided for electric signs in this ordinance and as further set forth in this section.'

"The purpose of the requirement that the bottom of the sign be left open is to illuminate the sidewalk, and such requirement is satisfied by providing a separate set of lights to illuminate the sidewalk. In connection with such separate set of lights, [217] it has long been the practice to provide a reflector which will direct the rays therefrom downwardly to the sidewalk.

"In defendants' structure, with which I am familiar, there is a box-like frame in the front of which is the transparent letter. This letter is illuminated by a row of lights fastened to the upper part of the box and a second row of lights carried by a bridge arranged near the bottom of the transparent characters. At the bottom of the box-like frame there is arranged a trough-shaped member, which is formed with a reflecting surface only on its under side. The upper side of this trough-shaped member is unfinished and is not intended to reflect light from any of the lamps above, and, moreover, is so positioned with respect to the transparent characters as to make it impossible to reflect any light therethrough. The sole function of the trough-shaped member is to direct the light from the lowermost lamps downwardly to the sidewalk. In this connection the upper sign member is complete and operative without the presence of the trough-shaped member,

and, on the other hand, the trough-shaped member and its enclosed lamps are operated exactly the same if placed on any other support, such as steel braces or brackets.

“I have examined United States patent No. 775,295 to R. W. Clark, dated November 22d, 1904, and understand the structure therein shown. It comprises a sign body A which carried at each side a sign character 4. At the bottom of the sign body there is a row of lamps 11, in connection with which there is arranged a reflector having a surface 8 to direct the light from the lamps downwardly. This reflector constitutes means for intercepting the rays from the lower lamps when the sign is observed at some distance horizontally therefrom.

“I have also examined United States patent No. 1,070,028 to Fortman, filed December 6th, 1912, and issued August 12th, 1913, and understand the structure shown and described therein. [218] It is primarily intended for a signaling device, but embodies principles and structural features equally applicable to any form of illuminated sign. It comprises an illuminated sign consisting of the letter ‘L’ and ‘R’ (Fig. 1). These letters are illuminated by lamps contained in compartments 6 and 7. Beneath the compartments 6 and 7 there is a lamp arranged in a compartment 8 to illuminate the ground and license plate. By means of the opaque glass front 23 and the inside partition 4 the rays from the lowermost lamp are intercepted so that the latter light will not be seen when the sign

(Deposition of Tracy W. Simpson.)

is observed at any distance horizontally therefrom.

“TRACY W. SIMPSON.

“Subscribed and sworn to before me this 6th day of December, 1921.

[Seal]

“W. W. HEALY,

“Notary Public in and for the City and County of San Francisco, State of California.”

[Endorsed]: “14. No. 577—In Equity. In the United States District Court for the Northern District of California, Second Division. Joseph Hotchner, Plaintiff, vs. Federal Sign System Electric (a Corporation), and Tracy W. Simpson, doing business as Federal Electric Company, Defendants. Affidavit of Tracy W. Simpson. Filed Dec. 6, 1921. Walter B. Maling, Clerk. Chas. E. Townsend, Attorney at Law, 909-917 Crocker Building, San Francisco, California, for Defendants.”

Cross-examination.

Mr. GRIFFIN.—Q. With respect to your testimony, Mr. Simpson, you are testifying substantially and entirely as to a time subsequent to 1914, aren't you?

A. No, sir. Any portions of my testimony relating to events which plainly transpired since then naturally refer to such later dates.

Q. With respect to signs made by the company with which you are identified, all these dates have to do with times subsequent to 1914, have they not?

A. No, sir. [219]

(Deposition of Tracy W. Simpson.)

Q. You were not with the company prior to 1914, were you?

A. No, sir, but I was a resident of Chicago, which was the home office of that company, and I was in the electrical business and interested in electrical matters, and a personal friend of the company at that time, and what should be more natural than that I should be more or less familiar with the various devices they were selling at that time.

Q. How were you so familiar?

A. Because I was interested in electrical matters, was in the electrical business, and a graduate of an electrical engineering school at Chicago, and for many years have considered that I would go with the Federal Electric Company.

Q. Were you ever in their shop prior to that time? A. Yes, as long ago as 1911.

Q. As to the construction of the signs that you have spoken of, referring to the signs with the raised lead molding, none of those signs were made prior to 1914?

A. No, sir. Lead molding is a recent development for us.

Q. With respect to your local work here, what company was it that made the Normal Pharmacy sign; was it the Federal Sign System Electric, or the Federal Electric Company, or under what title was it?

A. It was made by the Federal Electric Company, a California corporation.

(Deposition of Tracy W. Simpson.)

Q. And at the time this complaint was filed, that company was not incorporated?

A. Yes, that company was incorporated at that time.

Q. At that time? A. Yes.

The COURT.—Were these two separate and distinct concerns, or one company operating under two different names?

Mr. TOWNSEND.—Separate companies, your Honor.

Mr. GRIFFIN.—Q. You were the manager of the Federal Sign Company?

A. The Federal Sign System Electric. I could explain in a very few words the question of names.
[220]

The COURT.—This suit is against the Federal Sign System Electric, a California corporation.

Q. That is the concern you are connected with, isn't it? A. No, sir.

Mr. GRIFFIN.—We had more difficulty in finding out who made these signs. Mr. Simpson, we knew, was connected with several companies.

Q. How many companies were you connected with using the name "Federal"?

A. Two companies.

Q. Two companies only?

A. Two companies only, yes.

The COURT.—Q. Are you connected with the Federal Sign System Electric, a California corporation? A. Yes, sir.

Mr. GRIFFIN.—Q. What is your connection

(Deposition of Tracy W. Simpson.)

with that company? A. Secretary.

The COURT.—Q. What is the Federal Electric Company?

A. The Federal Electric Company is a corporation which was incorporated in 1912 in California, under the name Federal Sign System Electric, but the name Federal Sign System Electric became a misnomer, due to the development of our business in other fields, and we desired to change it. So that in 1919 we made application to the Superior Court for a change in name. At the time that we reached a decision that we would change our name from Federal Sign System Electric to Federal Electric Company, in order that no interloper would incorporate as Federal Sign System Electric at the time we changed our name, thereby taking advantage of the good will, I personally regarded myself as doing business under the fictitious trade style of Federal Sign System, taking on business in that name for two or three months during the time our application for a change of name was being developed.

Q. The name Federal Sign System Electric was changed to Federal Electric Company then, was it?

A. Yes, and then after the change of name we organized another corporation comprised of a few men who [221] are now in the Federal Electric Company, in order that the name would still be protected and that no interloper could use the name Federal Sign System Electric.

(Deposition of Tracy W. Simpson.)

Q. What is your capacity with the Federal Sign Company?

A. There is no Federal Sign Company.

Q. Federal Electric Sign Company.

A. There is no such company.

Q. What is the true title of the company that made the Normal Pharmacy sign?

A. The Federal Electric Company.

Q. The Federal Electric Company?

A. Yes, sir.

Q. What is your position with that company?

A. I am vice-president and western district manager.

Mr. GRIFFIN.—In view of the witness' statement I would ask to amend the complaint, as it is recited here that it is believed that Tracy W. Simpson is doing business as the Federal Electric Company; I want to change that to corporation.

Mr. TOWNSEND.—That is rather a belated request, to bring in another defendant after the case is practically concluded.

Mr. GRIFFIN.—We exercised the greatest diligence in endeavoring to straighten out these names at the time this complaint was filed, and it was impossible for us to arrive at any closer conclusion.

The COURT.—Has there been any service on the Federal Electric Company?

Mr. GRIFFIN.—There has been service on Mr. Simpson. He is sued as an individual and as the Federal Sign System Electric and the Federal Electric Company.

(Deposition of Tracy W. Simpson.)

The COURT.—He is sued as an individual doing business as the Federal Electric Company. Of course, that would give the Court no jurisdiction, for the Federal Electric Company. You would have to bring them in and serve a subpoena on them. That is not very material at this stage of the game, however. Proceed. You would not only have to amend your complaint, but [222] you would have to issue a subpoena and bring them in.

Mr. GRIFFIN.—Q. With respect to the French patent to Boldes, you observed that the body of the sign was made of glass, did you not?

A. That portion of the body of the sign directly back of the letter is made of glass.

Q. And that the molding was fastened on to the glass? A. Yes.

Q. That would be a very fragile way to make an electric sign, would it not?

A. No, sir, provided the rest of the patent is carried out as it is disclosed in the description of the patent, which says that the background of the sign may be made opaque in any usual manner, which statement does not fail to include metal as such a usual manner of making glass opaque. We could cut out a sheet of metal and place it over that glass.

Q. However, there is no such disclosure as that in the patent?

A. It would be a very natural inference to anyone.

Q. I am not asking you that. There is no such

(Deposition of Tracy W. Simpson.)

disclosure as that in the patent, is there? Answer that "Yes" or "No."

A. There is a disclosure in the patent to the effect that that background may be made opaque by any ordinary means.

Q. However, there is nothing disclosed in the patent concerning the production of a sheet metal body with the raised molding outlining the character on a sheet metal body?

The COURT.—If the patent provides for making it opaque, the inference would be that it was glass or some other transparent article.

Mr. GRIFFIN.—Q. You are familiar with the claim in issue in this case, on the patent of 1918, are you not?

A. No, sir, I am not familiar with any claim.

Mr. TOWNSEND.—The matter of the claim is for the Court.

Mr. GRIFFIN.—The witness stated that he was familiar with the patent.

Mr. TOWNSEND.—He said he was familiar with the construction.

A. I don't claim to be a judge of claims. [223]

Mr. GRIFFIN.—Q. Then you don't know whether or not this construction—

The COURT.—Q. That was prepared from the drawings, was it? A. Yes, sir.

Mr. GRIFFIN.—Q. You don't know whether this construction, Defendants' Exhibit "Y," purporting to be the same as figures 3 and 4 of Hotch-

(Deposition of Tracy W. Simpson.)

ner patent 1259237, is in any way covered by the claim in issue in this case?

Mr. TOWNSEND.—That is an improper question.

The COURT.—He has so testified. He said that corresponds to the figures shown in the patent itself.

Mr. GRIFFIN.—Q. I will show you Plaintiff's Exhibit 5, and ask you with respect to the lower line of letters whether or not that line of letters, or, rather, I will ask you this way: Is not that lower line of letters shown in that sign in a different position with respect to the body of the sign proportionately from the letter shown in this model, Defendants' Exhibit "EE"?

A. No, sir, the relative position is the same in that a horizontal line drawn along the lower line of the letters "L. Chase, Clothier" is higher up than the top of the reflector underneath the sign by a distance of from one-half to three-quarters of an inch.

Q. What is the height of the letters in the lower line?

A. I don't recall exactly; I believe they are 10 inches high.

The COURT.—Q. These letters are not uniform in all signs, are they? A. No, sir, they vary.

Mr. GRIFFIN.—Q. How high would you say those letters were from the bottom of the sign?

A. Approximately 7 inches.

Q. Is it not a fact that the reflector inside of the sign is more than 7 inches deep?

(Deposition of Tracy W. Simpson.)

A. No, sir. We measured that very particularly since this came up.

Q. How deep into the sign does that reflector go?

A. I don't recall the exact figure as to the distance from the lower line of the lower line of letters to the bottom edge of the sign, [224] and the exact distance upwards that the reflector extends into the sign, but I do recall particularly that the difference between those dimensions was from one-half to three-quarters of an inch; that is to say, the distance upward from the lower line of the lower line of letters above the edge of the sign is one-half to three-quarters of an inch higher than the vertical height of the reflector upwards into the sign.

Q. That very fact would not preclude the reflection of some light from that reflector as it might in a sign such as you have shown here, where the height above the reflector of the bottom of the letter is approximately two inches?

A. It would preclude it; there is no possible way that that light could be reflected backwards up into the sign from a reflector, when the upper line of reflector is lower than the lowest line on the characters themselves.

Q. Is it not a fact that the light would be reflected into the body of the sign, and then back to the other side, and then out to the letters on the opposite side, if there were any?

A. No, sir, not with that form of construction.

Q. Examining the Little patent, 32195, I will ask

(Deposition of Tracy W. Simpson.)

you whether you obtained your information from the patent as to the production of the raised molding? I have a copy of the patent here. Is it not a fact that, examining the Figure 2, the letters are shown recessed in a body of wood?

A. I will answer your first question first; I obtained the information that the beveled outline of the letter as shown in my model of the Little patent could be of the construction exhibited in the model from lines 55 and following in the patent:

“Instead of forming the flaring letters by beveling the edges of the signboard, the letters may each be made of metal cast with these beveled edges with flanges protecting from their flaring edges.”

Q. However, there is nothing in what you have read that would in [225] any way indicate that the molding was to be raised above the body of the sign, is there?

A. An examination of the drawing will disclose that the flange is described—

Q. That is not what I am asking you. I will ask that you answer the question. I will ask the reporter to read it to you.

(Question read by the reporter.)

A. Yes, there is something here which would indicate that.

Q. Read it.

A. “The letters may each be made by metal cast with these beveled edges, with flanges projecting from their flaring edges.” The word “flange”

(Deposition of Tracy W. Simpson.)

indicates that the metal is formed outwardly in the shape of a flange, which must have thickness to it, and, therefore, it must rise above the level of the sideboard.

Q. But there is nothing said there definitely as to the molding rising above the signboard, is there?

A. No, sir, but the drawing plainly discloses it.

Mr. GRIFFIN.—I move that the latter part of the answer be stricken out as not responsive to the question.

The COURT.—Motion denied.

Mr. GRIFFIN.—As far as the testimony of this witness goes as given here, and outside of the affidavit, which I have not had an opportunity to read, I will close the cross-examination.

The COURT.—You are through with the cross-examination, so far as his examination in open court has gone?

Mr. GRIFFIN.—Yes, your Honor.

The COURT.—Very well. Is there anything further?

Mr. TOWNSEND.—Defendant rests. [226]

**Deposition of Joseph Hotchner, for Plaintiff
(Recalled in Rebuttal).**

JOSEPH HOTCHNER, recalled for plaintiff in rebuttal, testified as follows:

I made the invention shown in the 1918 patent in 1910. I had this model made soon after. It was built at 837 Ellis Street, our old factory. (The model was offered in evidence and marked Plaintiff's Exhibit No. 9.)

(Deposition of Joseph Hotchner.)

Mr. TOWNSEND.—Objected to as immaterial, irrelevant, incompetent, not proper rebuttal, and no proper foundation has been laid.

The COURT.—Objection overruled.

WITNESS.—(Continuing.) Mr. Meeks made that model at my request.

Mr. TOWNSEND.—We make the further objection that it is not made according to any teachings of the patent.

The COURT.—It may be admitted for what it is worth. Proceed.

WITNESS.—With respect to the other patent, the invention was made a few months later than this. I fix the date because I built a model of it myself, and I took one of these boxes—we had several of them—and I put the reflector into it and tried it out. This was done in our old factory. I don't know what became of that model. When we moved we lost a lot of things, and a lot of things got broke up. The first sign I sold made like Exhibit 9 was that to Max L. Shirpser on Market Street, in the 800 block. I can identify the order. The date was December 5, 1913. It was taken from our order book. It is an original entry. I am familiar with the order books of the Novelty Electric Sign Co.

Mr. GRIFFIN.—The patent application was filed October 19, 1914. This first sign was sold some 13 or 14 months prior to the application, well within the two-year period. I offer this order in evidence and ask to have it marked Plaintiff's Exhibit 10.

(Deposition of Joseph Hotchner.)

Mr. TOWNSEND.—Objected to as immaterial, irrelevant and [227] incompetent, and no proper foundation laid; it is a mere paper that does not prove its own contents.

The COURT.—He can use it for the purpose of refreshing his recollection, but it is not competent beyond that.

Mr. GRIFFIN.—That is all I am using it for.'

The COURT.—You have used it for that purpose. I will sustain the objection to its admission.

Mr. GRIFFIN.—You sustain the objection to the admission of the document in evidence?

The COURT.—I understand a man may use his books, or anything of that kind, to refresh his recollection, but that does not make the book competent evidence.

Mr. TOWNSEND.—That is right, your Honor, but he has not laid the foundation by showing that the witness needs to refer to it.

Mr. GRIFFIN.—Q. Referring to the order which I have just shown you, from Max Shirpser, do you know whether that order was ever filled?

Mr. TOWNSEND.—Objected to as calling for secondary evidence. If he has that original sign, that is the best evidence.

The COURT.—He can just use the order for the purpose of refreshing his recollection as to dates.

Mr. TOWNSEND.—That he sold some sign on that date.

The COURT.—Yes.

A. Yes, sir.

(Deposition of Joseph Hotchner.)

Mr. GRIFFIN.—Q. How was the sign sold to Max Shirpser under this order constructed?

Mr. TOWNSEND.—That is objected to as immaterial, irrelevant and incompetent. That is improper until he has shown some foundation that this sign is not in existence, because that is the best evidence.

The COURT.—A man can testify that he saw a horse and can describe it then and the horse need not be introduced in evidence. [228] You can't bring everything into court. I will allow the question to be answered.

Mr. GRIFFIN.—I might say that this sign is in existence and you can go down and look at it.

The COURT.—Proceed.

A. It was constructed in accordance with my patent.

Q. Which one? A. Claim 4.

Q. Of which patent? A. The first one.

Mr. TOWNSEND.—I move that be stricken out.

The COURT.—I suppose he means similar to the model that has been offered in evidence here.

Mr. GRIFFIN.—Q. I will show you a photograph and ask you if you can identify it?

A. Yes. The sign is there to-day. That is a photograph of it.

Q. Of what? A. Of that very sign.

Q. The Max Shirpser sign?

A. Yes. I think it is 910 or 912 Market Street, almost opposite Fifth Street.

Mr. GRIFFIN.—I offer the photograph in evi-

(Deposition of Joseph Hotchner.)

dence, and ask that it be marked Plaintiff's Exhibit 10.

Mr. TOWNSEND.—I object to it as immaterial, irrelevant and incompetent, and no proper foundation laid.

The COURT.—Objection overruled.

(The photograph was marked Plaintiff's Exhibit 10.)

Mr. GRIFFIN.—Q. I will show you the photograph and ask you to describe, for the benefit of the Court, the precise construction of the sign.

The COURT.—I suppose it is in accordance with the model you offered in evidence?

Mr. GRIFFIN.—It is in accordance with the model I am just about to offer in evidence, except in certain particulars.

Mr. TOWNSEND.—You say except in certain particulars; then that vitiates the comparison. This sign is not made according [229] to the patent, or anything like the patent.

The COURT.—Proceed. I don't want to take up too much time with these descriptions.

A. It is a box structure with the lights therein. On the face there is that raised molding in outline all around the elements of the letters. The letters are cut out from metal, the central portion, and the translucent material is back of them, white opal glass.

Mr. GRIFFIN.—Q. How is the molding secured?

A. Soldered on.

Q. Did you ever see the sign in Los Angeles re-

(Deposition of Joseph Hotchner.)

ferred to in this case as the White Sewing Machine sign? A. I did.

Q. What are the defects in such a sign as that?

Mr. TOWNSEND.—That is leading. It has not any defects, so far as we know.

Mr. GRIFFIN.—If your Honor please, there would be much that would be made clear if we had read all of these depositions. It is impossible at the time of this hearing, with the haste with which this proceeding is going through, to get all that matter before the Court.

The COURT.—Proceed.

A. It is a raised molding and wood around the elements of the letter, and has a gauze mesh between the letter and the body of the sign.

Q. Was that a satisfactory type of sign?

A. No, sir. It cannot be. The molding breaks, and it is practically prohibited by the laws of various counties and cities.

Q. Did you have anything to do with the original invention of that character of a sign?

A. Yes, it was my invention, but I could not make it pay because the sign was unsatisfactory; it was not a commercial article. We had had a sign up, and in the course of two or three months half of the letters would be broke away and split. [230]

The COURT.—Do you claim that the change from wood to some other material is invention?

Mr. GRIFFIN.—Not put in that way, your Honor. What we claim is that what claim 4 of this patent discloses is a valid invention, to wit, all of

(Deposition of Joseph Hotchner.)

the construction mentioned in that claim. We do not claim that simply changing from wood to metal—

The COURT.—Or from wire to glass.

Mr. GRIFFIN.—Or from wire to glass, is an invention. It requires the entire series of elements recited in the claim to make the invention valid.

The COURT.—Proceed.

Mr. GRIFFIN.—Q. Showing you the photograph, Plaintiff's Exhibit No. 5, and calling your attention to Defendants' Exhibit "EE," what have you to say with respect to the distance the lower line of letters is up from the bottom of the sign body, and the possibility of light being reflected from the interior of the sign through that lower line of letters after striking the reflector that normally reflects the light from the under side of the sign to the street?

Mr. TOWNSEND.—That is objected to, because this witness said on direct examination that he had no knowledge of the interior construction of the sign shown in the photograph Exhibit 5, and he never made any measurements.

The COURT.—Are you asking him to answer the question from an inspection of the photograph, or from measurements taken?

Mr. GRIFFIN.—From an inspection of the model and from an inspection of the photograph.

The COURT.—The photograph does not show anything in relation to that, I don't suppose.

(Deposition of Joseph Hotchner.)

Mr. LOFTUS.—No, your Honor, and it could not be accurate.

Mr. GRIFFIN.—It is so close, your Honor, that you can see it. [231]

The COURT.—A photograph can be so taken as to show almost anything. He may answer the question if he likes.

Mr. GRIFFIN.—Before he answers it I will ask him this question: Q. To what extent did you examine the signs illustrated in that photograph?

Mr. TOWNSEND.—That is not rebuttal.

The COURT.—Answer the question.

A. What was the question?

Mr. GRIFFIN.—Q. To what extent did you examine the signs illustrated in the photograph?

A. I examined the signs that—

The COURT.—He has testified to that before.

Mr. GRIFFIN.—Yes, I know he did.

A. I examined the sign from the street, and could look in and see the illuminator underneath, how far up it went. It went up far enough to take and close up the lamp, so that the bottom of the lamp did not protrude below the bottom of the sign.

Mr. TOWNSEND.—I move that the answer be stricken out because the witness is speaking from a conclusion, and without measurements, and he could not know where the lamps were on the inside of the box.

The COURT.—He said the electric bulbs did not extend below the bottom. That does not prove any-

(Deposition of Joseph Hotchner.)

thing to the court. The answer will stand for what it is worth.

Mr. GRIFFIN.—Q. As you were examining the sign at that time, could you tell about what distance that was?

A. About six inches.

Q. Are you familiar with the length of those lamps? A. Yes. The lamp is not six inches.

Mr. GRIFFIN.—That is all. [232]

Cross-examination.

Mr. LOFTUS.—Q. In regard to this sign that was made for Max Shirpser, did that sign have any patent dates on it?

A. Well, I could not tell that; I don't think so, but I could not tell that.

Q. What other signs did you put out at that time?

A. I didn't put any out after that for some time, because I made this sign by hand and it cost too much money to make it that way; we had to get dies made to strike out the letters, to stamp them out, and it took some time.

The COURT.—That is not responsive to the question. He asked you what other signs you put out, if any.

A. The first ones I think were put out in 1914; they were stamped out.

Mr. LOFTUS.—Q. What was the next one after the Shirpser sign?

A. I could tell by looking up our books, but I can't tell offhand. We began to put out a whole

(Deposition of Joseph Hotchner.)

lot of them then; I could not say right now which was the next one, but there are a whole lot of them out.

Q. Is it not a fact that the Shirpser sign bore the legend, "Patented August 30, 1904"?

A. Maybe it did; I could not say that it did or did not.

The COURT.—Is that the date of the first patent?

Mr. LOFTUS.—That is the date of the first patent.

Q. And is it not a fact that nearly all the signs you put out in subsequent years bore that date, "Patented August 30, 1904"?

A. It might have been so. That was prior to the time when I applied for this other patent.

Q. And even after you applied for this patent?

A. No, not after I applied for the patent.

Q. What is the patent marking on the sign reading, "Grocery," up on Bush Street; you installed that sign on Bush Street, between Powell and Stockton, didn't you? A. Yes. [233]

Q. When was that installed?

A. I cannot tell you without looking at the books.

Q. What is the patent marking on that?

A. I couldn't tell you that.

Q. You installed a sign reading, "Pine Garage."

A. Yes.

Q. When was that installed?

A. I should think that all those signs were put up in 1914, or possibly 1915.

(Deposition of Joseph Hotchner.)

Q. And what was the marking on the Pine Garage sign? A. I could not tell you.

Q. Down here on Market Street there is a sign reading, "Daylight Market"; you installed that sign, did you? A. Yes.

Q. When was that installed?

A. I think that probably was installed in 1916.

Q. What is the patent marking on that?

A. I could not say.

Q. Is it not a fact it is marked, "Patented August 30, 1904"? A. I don't know.

Mr. GRIFFIN.—This is all objected to as immaterial, irrelevant and incompetent, and not proper cross-examination.

The COURT.—He says he does not know.

Mr. LOFTUS.—Q. You stated that the sign in Los Angeles reading "White," embodied the same construction as shown in your 1904 patent?

A. No, not exactly.

Q. You said it was similar.

A. It was similar, yes.

Q. But you had reference to this construction, did you, that is, exhibit "DD"?

A. No, it is not this construction. It is a wooden outline, all right, but this mesh is very much heavier. I should think it is about a 16-inch mesh, and it is set between this letter and between this body of the sign; this is soldered on in the back.

Q. Do you know how long that Los Angeles sign, reading, "White" has been in use?

A. I could not tell you that, I don't recollect. I

(Deposition of Joseph Hotchner.)

have seen it, but I could not tell you how long it has been in use. I saw it there last spring and I saw it there, [234] I think, the year before. I cannot tell you how long it has been in use.

Q. The Shirpsers sign that you referred to, I understand that that had a molding that was soldered on.

A. We broke it to form a molding, and we soldered it all around, as the picture shows.

Q. This model exhibit 9, how long has that been on the shelf?

A. It has been knocking around; it has not been exactly on the shelf. In the beginning I went out with this, and I sold signs by it.

Q. The first sign you sold was the Shirpsers sign?

A. The first sign I sold was the Shirpsers sign.

Q. Prior to that time you had done nothing with it?

A. Prior to that time I had done nothing with it.

Q. You merely stored it away and left it?

A. That is all.

Q. When was this glass put *it* here?

A. We put in a number of glasses.

The COURT.—He is speaking about this particular one.

A. (Continuing.) That is impossible for me to say. It must be a number of years since this glass was put in. We broke lots of glass, as I or my salesmen went around, and we replaced it and with that re-gilded this a number of times.

The COURT.—Anything further?

(Deposition of W. W. Ferris.)

Mr. LOFTUS.—Nothing further.

Mr. GRIFFIN.—That is all.

Deposition of W. W. Ferris, for Plaintiff.

W. W. FERRIS, being called upon behalf of plaintiff, testified as follows:

My name is W. W. Ferris. I reside at 4211 Dalton Avenue, Los Angeles, California. I am engaged in selling and manufacturing electric signs, and have been so engaged for seventeen years continuously. I was in Denver, Colorado, from 1911 to 1914, at [235] different times. I am familiar with the electric signs disclosed in United States Patent No. 1,259,237 of March 18, 1918, made under license by the Novelty Electric Sign Co. of San Francisco, California, known as the "Luminus Electric Sign." I was in Denver in 1914 for the purpose of finding something new in the electric sign business. I was going to Los Angeles. My intention was to enter the manufacture of electric signs immediately on arriving in Los Angeles, and I stopped there for the purpose of finding anything new or looking for anything new that I might find there in the shape of electric signs. I was in Denver four days. I observed the business streets of Denver both by day and night, about the middle of February, 1914.

Q. Did you observe any Luminus Electric Signs on the streets of Denver at that time?

A. No; neither in the day time nor the night time. I had been in May's Department Store in

(Deposition of W. W. Ferris.)

Denver twice that I know of. I did not observe any Luminus Electric Signs in May's Department Store at that time. I passed 516 Sixteenth Street, the store being known as the "New York Floral Company." I did not observe any Luminus Electric Sign over or in front of the store with the word "Florist" on it. I passed No. 757 Broadway, in Denver, on this visit, but did not see a Luminus Electric Sign there with the words "DuBois" with "5 cents" underneath, neither in front of nor over this store. I passed No. 137 15th Street in the city of Denver on this visit, but did not see a Luminus Electric Sign with the words "Denver Electrical Company" either over or in front of this store at this time.

Q. If there had been a sign of this construction on display or in use at any of the places that I have mentioned, and of the character that I have mentioned, would you not have observed it?

A. Yes, I most surely would, for I was there for that purpose, in looking up new ideas, looking for something new. [236]

Q. At these places that I have mentioned outside of May's Department Store, did you pass by them both in the daytime and in the night-time?

A. Yes.

Q. 26. Are you familiar with the signs here in Los Angeles with a raised wooden molding around the letter characters? A. Yes.

Q. 27. When did you first see such a sign?

A. About 1915.

Q. 28. What does the sign read?

(Deposition of W. W. Ferris.)

A. It just reads "White"; that is, it was put up for the White Sewing Machine Company.

Q. 29. Do you regard this as a satisfactory sign or not?

By Mr. FENIMORE.—Now, just a moment. I object to that as calling for the conclusion of the witness and as leading and suggestive.

The WITNESS.—No.

(By Mr. ELDER.)

Q. 30. What are its defects?

By Mr. FENIMORE.—That is objected to upon the same ground.

The WITNESS.—The defects are that it is made of wood molding which screwed on to the face of the sign with screws and that the elements, that is, the weather, when it rains, the wood expands and cracks off, and it is, in my estimation, entirely unsatisfactory.

(By Mr. ELDER.)

Q. 31. Can it sell in competition with the Hotchner sign? A. No.

Q. 32. Why not?

By Mr. FENIMORE.—That is objected to as calling for the conclusion of the witness.

The WITNESS.—Because as it is made, it contains wood, and the ordinances prohibit any sign being made of combustible material.

(By Mr. ELDER.)

Q. 33. Why is it that the electrical departments in most of the cities object to the use of wood in connection with electric signs?

(Deposition of W. W. Ferris.)

By Mr. FENIMORE.—That is objected to as calling for the conclusion of the witness. [237]

The WITNESS.—Well, because they are inflammable and apt to start fires.

(By Mr. ELDER.)

Q. 34. What is the reason, Mr. Ferris, that these wood signs are not practical?

By Mr. FENIMORE. Objected to as calling for the conclusion of the witness.

The WITNESS.—Principally because they do not last and that they do not pass inspection for the reason that they are constructed of wood and are more or less dangerous; for the reason that they project out over a street usually, and they are not made to last as a metal sign would.

(By Mr. ELDER.)

Q. 35. Do you know whether or not there are ordinances in the principal cities of the country prohibiting the use of wood in electrical signs?

A. Yes.

Q. 36. You do know that? A. Yes, sir.

Q. 37. State whether there are such ordinances or not?

By Mr. FENIMORE.—That is objected to as not the best evidence.

The WITNESS.—Yes.

(By Mr. ELDER.)

Q. 38. Mr. Ferris, you stated that you had been in the electrical sign business, that is, both in selling and in manufacturing, for the past seventeen years; is that correct?

(Deposition of W. W. Ferris.)

A. Yes.

Q. 39. State by whom you have been employed during this period and what your duties were during this time?

A. My first appearance was with the Daugherty Operating Company, who own the Denver Gas & Electric Company, and several other large public utilities like at Scranton, Pennsylvania; Scranton, Pennsylvania, was my second move in the business.

Q. 40. What were your duties with this first company?

A. I was a salesman, but we were selling electric signs that were made by—some we had made by local manufacturers and others were made by experienced sign manufacturers. [238]

Q. 41. And you were selling electrical signs?

A. Yes, sir.

Q. 42. As such salesman, was it your duty to keep posted with all the different kinds of signs in use?

By Mr. FENIMORE.—That last question is objected to as leading.

The WITNESS.—Yes. They frequently sent us from one city to another to investigate or to get new ideas, you know; that was the principal thing.

Q. 43. (By Mr. ELDER.) Where was your next experience?

A. My next experience was at Syracuse, New York, where I placed one hundred thousand lamps in twenty-seven months. I manufactured most of the signs that were erected in the city of Syracuse,

(Deposition of W. W. Ferris.)

under my direction, and I sold them through the Syracuse Lighting Company.

Q. 44. Was it still your duty, at that time, to keep posted on any new ideas in the electrical sign business?

By Mr. FENIMORE.—That is objected to as leading.

The WITNESS.—Yes. During my stay there I made several trips and sold a good many signs for the United Gas & Improvement Company, the Syracuse Lighting Company being one of the subsidiary companies of the U. G. & I. Philadelphia, and they had properties scattered all over the country. One place that I started an electric sign campaign was at Charleston, South Carolina, and Johnstown and Gloversville, New York.

(By Mr. ELDER.)

Q. 45. What was your next experience in the electrical sign business?

A. My next experience was in taking charge of the new business department of the Federal Light & Traction Company at 60 Broadway, New York. They had about twenty gas and electric and street railway properties scattered from coast to coast and from Canada to Old Mexico, and it was my duty to go into these different cities and towns and promote the electric business generally, and, usually, in starting a campaign in any of these cities, the first thing we did was to put out a bunch of electric signs. Up at Aberdeen, Washington, I went there and hired [239] four or five men and we put in

(Deposition of W. W. Ferris.)

sixty-one electric signs in six weeks' time. That, I believe, was a world's record. They were all real electric signs, and that was only one of the companies. Now, I have sold signs in Sheridan, Wyoming, and Montrose, Colorado, and Trinidad, Colorado, and different places.

Q. 46. Well, I will ask you, generally, if, during all of this time, it has been a part of your business to observe the nature of electrical signs, their appearance and any new features connected with such signs?

By Mr. FENIMORE.—That is objected to as leading.

The WITNESS.—Yes, sir.

By Mr. ELDER.—That is all.

Cross-examination.

(By Mr. GEORGE W. FENIMORE.)

XQ. 47. What company are you at present connected with, Mr. Ferris?

A. The Greenwood Advertising Company.

XQ. 48. Located in Los Angeles, California?

A. At 1942 South Main Street, Los Angeles, California.

XQ. 49. Does the Greenwood Advertising Company have the agency for the Hotchner sign?

A. They do now, yes, sir.

XQ. 50. How long have they had that agency?

A. About four or five months; four months.

XQ. 51. Do you recall the occasion of your first visit to Denver in 1911? A. Yes.

(Deposition of W. W. Ferris.)

XQ. 52. At that time, did you observe any Luminus signs on display in that city? A. No.

XQ. 53. Were any of Mr. Hotchner's signs on display there at that time? A. No.

XQ. 54. Did you, at that time, know that Mr. Hotchner had devised a sign of any kind?

A. No.

XQ. 55. Did you know Mr. Hotchner at that time, or know of him? A. No, sir.

XQ. 56. Had you ever heard of him at that time?

A. No, sir. [240]

XQ. 57. What was the earliest date that you knew of Mr. Hotchner and his work?

A. About two and a half years ago.

XQ. 58. About 1918 or 1919, then?

A. Well, I would say, yes, 1918, the beginning of 1918, I would say.

XQ. 59. Prior to 1918, had you ever seen any signs which were of the same character as Mr. Hotchner's signs?

A. The only one that I saw was this White Sewing Machine sign that I mentioned.

XQ. 60. And what was the date that you first saw that sign? A. About 1915.

XQ. 61. Are you familiar with Mr. Hotchner's patent of 1904?

By Mr. ELDER.—I object to that as incompetent, irrelevant and immaterial.

The WITNESS.—No.

(Deposition of C. B. Thorne.)

(By Mr. FENIMORE.)

XQ. 62. Have you ever seen any sign made under that patent?

By Mr. ELDER.—The same objection.

The WITNESS.—No, for the reason that I did not know what the patent was. I may have seen it, but I do not know that I have seen it.

(By Mr. FENIMORE.)

XQ. 63. Did you ever hear of a Mr. Mackenzie?

A. No.

XQ. 64. You never saw any signs made or purporting to have been made by Mr. MacKenzie?

A. No, I never did.

XQ. 65. What is your capacity or position with the Greenwood Advertising Agency?

A. Salesman.

•XQ. 66. Salesman? A. Yes, sir.

By Mr. FENIMORE.—That is all.

By Mr. ELDER.—That is all. [241]

Deposition of C. B. Thorne, for Plaintiff (In Rebuttal).

C. B. THORNE, called for plaintiff in rebuttal, testified as follows:

My name is C. B. Thorne. I am 47 years of age, and reside at 1145 Pine Street. I am attending to my own investments. I lived in Denver from 1884 to 1920. In 1912 I was Deputy City Electrician of Denver. I had the supervision of the inspectors, OK-ing permits, also the certification of permits from the electrical department to the board of

(Deposition of C. B. Thorne.)

public works for the issuance of permits for the erection of signs.

Q. What do you do outside the office, if anything?

A. I take care of special inspections from time to time.

Q. What did that consist of?

A. To go out and inspect electric signs, and electrical connections, and so on and so forth.

Q. Do you ever remember inspecting the electric sign for the Denver Electrical Company, erected by the Prismatic Sign Co.? A. Yes, sir.

Q. I will show you a series of photographs, and also a ticket, and ask you if you can explain anything in connection with them, and can identify them?

The COURT.—Are these already in evidence?

Mr. GRIFFIN—No, they are not in evidence. One of the witnesses testified, if your Honor please, that this sign was erected and had this metal molding on it. This witness will testify that at the time of inspection it was a flat sign without molding, and that the molding was put on afterwards.

The COURT.—Proceed. You had better call his attention to that specific sign. When were these photographs taken?

Mr. GRIFFIN.—These are photographs that the witness made in Denver. He did not make the photographs—we don't wish to mislead the court upon that point.

Q. Do you recognize the matter purporting to

(Deposition of C. B. Thorne.)

appear upon these photographs? A. Yes, sir.
[242]

Q. Will you state what it is?

Mr. TOWNSEND.—If your Honor please, that is calling for secondary evidence. Apparently, these are photographs of papers not in evidence. There is no proper foundation laid for secondary evidence, even if competent. We do not know, yet, whether it is competent or relevant.

Mr. GRIFFIN.—Q. At the time you were the inspector in Denver, were you familiar with the records of the Department of Electricity?

A. Yes, sir.

Q. Did you examine the books, there?

A. Yes, sir.

Q. How many times?

A. Daily, two or three times a day.

Q. For how long a period?

A. For a year or so.

Q. Can you identify the matter appearing upon the photographs before you?

Mr. TOWNSEND.—That is objected to as immaterial, irrelevant and incompetent, and upon the further ground that it neither tends to prove nor disapprove any issue in this case.

The COURT.—You are seeking to prove a record by a photographic copy not certified or authenticated in any way.

Mr. GRIFFIN.—I am undertaking to prove by a man who was an official at that time the contents of the official records.

(Deposition of C. B. Thorne.)

The COURT.—The laws of the United States provide a method for authenticating these records and proving them; the only way you can prove them is by producing the authentication or by the original record. Of course, if it were a record which could not be produced here, you might possibly take the deposition of the party and produce a sworn copy. Objection sustained.

Mr. GRIFFIN.—Q. Did you inspect the electric sign erected for the Denver Electric Company, or do you know who inspected it?

A. Yes, I inspected it.

Q. Do those photographs in any way refresh your memory as to the condition of that sign at the time of the inspection? [243]

Mr. TOWNSEND.—The same objection.

The COURT.—You are assuming the very question that the Court has ruled on, that these copies are authentic. If he examined it he can probably testify independently of these records.

Mr. GRIFFIN.—Q. Can you testify as to the state of the electric sign erected for the Denver Electrical Company by the Prismatic Sign Company at the time of its erection in 1912?

A. In regard to the erection of the sign covered by these permits and at that date, I can.

Q. What was the state of that sign?

A. It was a flat letter sign.

Q. I will now show you a cross-section of an electric sign marked Defendants' Exhibit "A-6," and,

(Deposition of C. B. Thorne.)

as testified in this deposition, it is said to be a section cut from the Denver Electrical Company's sign, made by the Prismatic Sign Company, and I ask you if the molding shown on that sign was on it at the time you inspected the sign?

A. It was not.

The COURT.—Q. What year was that—1912?

A. 1912.

Mr. GRIFFIN.—I might say, your Honor, in respect to this particular sign, this is the only sign whose public use is proved definitely as being more than two years prior to the filing date. There are some other signs referred to by these same witnesses who testified that this was a raised-letter sign at this time.

The COURT.—I understand that. Proceed with the examination.

Mr. GRIFFIN.—Q. Do you remember how soon after this the raised-letter signs came into use in Denver?

A. No, I could not testify to that.

Cross-examination.

Mr. LOFTUS.—Q. Do you know how many signs the Prismatic Sign Company erected for the Denver Electrical Company?

A. I could not say for sure how many signs they erected for them.

The COURT.—Does the deposition show where this sign was?

Mr. LOFTUS.—Yes, your Honor. [244]

(Deposition of C. B. Thorne.)

The COURT.—Where was the sign from which this was taken?

Mr. LOFTUS.—It was in front of the Denver Electrical Company.

The COURT.—Q. That was the sign you examined and inspected, was it? A. Yes, sir.

Mr. LOFTUS.—Q. Did you know that there was more than one sign erected by the Prismatic Sign Company for the Denver Electrical Company?

A. Yes, I did.

Q. Are you familiar with both of those signs?

A. No, I am not.

Q. And you don't know from memory, now, which of these signs had the border and which did not?

A. I know that the sign that I inspected and the sign that was held up on account of permits from the Board of Public Works was all flat letters at the time it was inspected.

Q. There may have been another sign, so far as you know, that had the molding?

A. Yes, there may have been.

Q. At about that time?

A. No, sir, not at that time.

Q. You are testifying now just from your impression, after a lapse of 10 or 11 years?

A. Well, I had occasion to inspect the sign later on.

Q. When did you first have this matter called to your attention recently?

A. About a month ago, or two months ago.

Q. In what way did it come to your attention?

(Deposition of C. B. Thorne.)

A. Mr. Hotchner's attorney, I think, had certain people in Denver looking for me, and finally located me out here, and called on me.

Q. And he showed you a photograph of a permit, did he? A. No, sir, not at that time.

Q. He asked you if you recalled inspecting a sign for the Denver Electrical Company?

A. Yes, he did.

Q. And you told him that you did?

A. Yes, sir.

Q. And you described that sign to him?

A. I think I did.

Q. And you were familiar with only one flat sign?

A. The sign that I inspected, that is really the only one I am familiar with. [245]

Redirect Examination.

Mr. GRIFFIN.—Q. When did you last see the sign? A. I saw a sign there last June.

Q. Was that sign the same or different from the one you inspected in 1912?

A. The sign I saw in June had both raised and flat letters.

Q. Was it the same or different from the one you inspected?

A. It was different from the one I inspected.

Deposition of Joseph A. Meeks, for Plaintiff (Recalled in Rebuttal).

JOSEPH A. MEEKS, recalled for plaintiff in rebuttal.

Mr. GRIFFIN.—Q. I will show you a sign that has been previously marked Plaintiff's Exhibit 9,

(Deposition of Joseph A. Meeks.)

and ask you if you have ever seen that sign before?

A. Yes, sir.

Q. When, if you know?

A. I have seen it several times.

Q. When did you first see it?

A. That is hard for me to fix a definite date; I made the model myself.

Q. When did you make it?

A. I should judge that it was made in 1910, the latter part of 1910.

Q. How do you fix that date?

A. I fix the date, because I remember taking the model before we left Ellis street; we were at 165 Eddy Street ten years last July.

Q. Since the morning session of this court, did you go over to Oakland and examine the signs testified about this morning? A. I did.

Q. Did you look inside there? A. Yes, sir.

Q. I will show you a photograph heretofore offered in evidence, carrying the words, "Harry Rose, Haberdasher," and "Al. Chase, Clothier," and ask you with respect to the lower line of letters reading, "Al. Chase, Clothier," whether or not, in your opinion, it is possible for light proceeding from the upper lamps to be— [246]

The COURT.—He may answer.

A. In my opinion it does reflect.

No cross-examination.

**Deposition of Edward Boylan, for Plaintiff
(In Rebuttal).**

EDWARD BOYLAN, called for plaintiff in rebuttal, testified as follows:

I have examined a sign in Oakland heretofore referred to in this case, bearing the words "Harry Rose, Haberdasher" and "Al. Chase, Clothier," at a quarter past one. I looked inside those signs.

Q. Referring to the words, "Al. Chase, Clothier" I will ask you whether in your opinion the light proceeding from the lamps inside the sign and against the reflectors in the bottom of that sign, which normally send the light from the outside of the reflector to the street, would direct any light through those letters, or not?

Mr. TOWNSEND.—That is objected to as no proper foundation has been laid.

The COURT.—Unless the man experimented, or has some knowledge of those things, his opinion would not be worth anything.

The WITNESS.—(Continuing.) I have been engaged in the sign business about fifteen years in San Francisco. I put up signs in Oakland. In my time I have erected an average of about five signs a week.

The COURT.—Answer the question.

Q. Could any light from the interior of the signs pass against the reflectors at the bottom of the sign and through the letters "Al. Chase, Clothier."

A. I don't think I know what you mean. Do you

(Deposition of Edward Boylan.)

mean the light from the letters that throw out onto the sidewalk?

Mr. GRIFFIN.—No, I mean the light from the inside of the sign proceeding down against the inside reflector here which is shown in this photograph, and then from there against the letters “Al. Chase, [247] Clothier.” A. I believe it could.

The COURT.—This question is susceptible of demonstration, and should not depend on the haphazard testimony of witnesses. Proceed.

Deposition of T. N. Slocum, for Plaintiff.

Plaintiff thereupon called T. N. SLOCUM, who testified as follows:

My name is T. N. Slocum. I reside at the Hotel Washington. I am 36 years old. I am an electric light salesman. I have seen a sign in Portland reading “Hotel Oregon.”

Q. I might say that the photograph of this sign has been heretofore introduced in evidence; will you state to the Court how the sign is constructed, with respect to its appearance, in the flanges surrounding the elements of the letter?

Mr. TOWNSEND.—Objected to as not proper foundation has been laid.

The COURT.—He said he saw it.

Mr. TOWNSEND.—But that does not indicate anything.

The COURT.—To what particular time did the testimony of your witness relate?

Mr. LOFTUS.—The installation was in 1911.

(Deposition of T. N. Slocum.)

The COURT.—Q. When did you first see it, and how often did you see it?

A. For the last two years that I have been traveling in and out of Portland.

Mr. GRIFFIN.—There is no controversy as to the condition of the sign.

The COURT.—Let him answer the question.

A. It is a cut-out transparency sign, with what is known as a channel border.

Mr. GRIFFIN.—Q. How do the flanges extend from the outside of the channel border?

A. The flange extends out at right angles to the body of the sign, and then there is a little flange that extends out from this channel, that is on a horizontal plane with the body of the sign.

Q. Referring to Plaintiff's Exhibit No. 9, would you say that that [248] Hotel Oregon sign was the same or different from this?

A. No, it is not like that.

Mr. GRIFFIN.—That is all.

Mr. TOWNSEND.—No cross-examination.

Mr. GRIFFIN.—That is all, your Honor.

The COURT.—If there is to be any further cross-examination on this affidavit, it may take place tomorrow morning. I suppose it will be brief.

Mr. GRIFFIN.—Yes, it will be brief, if there is any.

The COURT.—You have nothing further to offer, I suppose?

Mr. TOWNSEND.—No, your Honor, we rest.

(Deposition of Tracy W. Simpson.)

The COURT.—We will take an adjournment until to-morrow morning at ten o'clock.

(An adjournment was here taken until to-morrow, Wednesday, December 7, 1921, at ten o'clock A. M.)

Wednesday, December 7, 1921.

Mr. TOWNSEND.—Your Honor, I will recall Mr. Simpson to the stand, and I desire to ask him a few questions before counsel cross-examines him.

The COURT.—Proceed.

**Deposition of Tracy W. Simpson, for Defendant
(Recalled).**

TRACY W. SIMPSON, recalled for defendant.

Mr. TOWNSEND.—Q. In your examination, Mr. Simpson, you referred to various types of signs that had been made by your companies, including the flat type which is in evidence, with the letter without any border, and glass backing up that letter; you also referred to another type in which there was a channel border around the letter; can you produce a sample of the channel type [249] of letter?

A. Yes, I have such a sample with me here.

Q. How long has such a construction, such as you hold in your hand, been on the market?

A. To my personal knowledge this form of construction has been on the market since 1911.

Q. Is that a type of construction used to-day?

A. Yes, it is in very considerable use; in fact, it often has been used by the plaintiff and no patent

(Deposition of Tracy W. Simpson.)

marks were shown on the construction put out by the plaintiff similar to this.

Q. How recently have you seen one of the plaintiff's?

A. I saw one on Market street this morning as we walked up to this building.

Mr. TOWNSEND.—We offer this in evidence, your Honor.

(The model was here marked Defendants Exhibit "HH.")

Cross-examination.

Mr. GRIFFIN.—Q. The type of letter that you have just spoken of and just identified is known as the channel type letter in the trade, is it not?

A. By some, yes; it also has another designation, of a flat glass transparency sign with a strip metal outline around the letter.

Q. This type of sign with a raised flange of this kind is known throughout the trade as a channel letter sign?

A. No, sir, I would not say so. To my knowledge, the designation "channel letter" as a rule, pertains to signs using exposed lamps on the outside of the sign, and the channels are very deep, over an inch or so.

Q. However, whether the channel is deep or shallow, it is still called a channel letter, whether it is interiorly illuminated or exteriorly illuminated, with a series of lamps exterior to the sign?

A. Yes, sir.

(Deposition of Tracy W. Simpson.)

Q. Where was this sign that you say you saw that was installed by the plaintiff?

A. The sign reads "Shoe Mart," with various numbers underneath, specifying the prices of shoes. It is on the north side of Market street, a block or so east of this building.

Q. You don't know when that was put up?

A. It was put up recently. [250]

Q. In your affidavit you state you are familiar with the reading of drawings and patent specifications: Is that a fact? A. Yes, sir.

Q. You understand the wording of the claim in issue in this case, that is, in the first patent, Claim 4?

Mr. TOWNSEND.—Your Honor, this witness has not testified as to the construction of claims; the construction of claims is for the Court.

The COURT.—Yes. I don't know what is in the affidavit.

Mr. GRIFFIN.—The witness stated he was familiar with drawings and specifications in patents. I am entitled to cross-examine him as to whether he is familiar with that matter. He inserted in his affidavit the claim in issue in this case, and says, "The same thought finds expression in Claim 4 of the Hotchner patent."

The COURT.—Answer the question.

A. Yes, I am familiar with that claim so far as I am a judge of claims.

Mr. GRIFFIN.—Q. In that claim you don't find the word "pressing," at all, do you?

(Deposition of Tracy W. Simpson.)

Mr. TOWNSEND.—I object to that, because the claim is the best evidence.

The COURT.—Answer the question.

A. I find the word “formed,” which is a synonymous process, as I further stated—“formed therein.” You may have any number of formings without any pressing. The affidavit states in detail the meaning of forming and pressing as generally understood in the mechanical art.

Q. But, as a matter of fact, forming is not at all an equivalent of pressing?

A. That is fully stated in the affidavit.

Q. Just answer the question, never mind the affidavit.

A. Yes, it is very generally an equivalent. “Forming” means [251] bending; “pressing” means bending, sometimes with stretching. The two terms are very nearly synonymous.

Mr. GRIFFIN.—Q. You might form that box, I might form something but not bend it or press it.

A. Not in the mechanical arms. To form that border as shown in the Hotchner patent—

The COURT.—I suppose that Webster is as good an authority on definitions as any witness you might call. I don’t see any necessity for this.

Mr. GRIFFIN.—I will let that go.

Q. I show you Plaintiff’s Exhibit No. 9; it is a fact that there is no element in the claim that is not present in this exhibit, is it not?

Mr. TOWNSEND.—The same objection.

(Deposition of Tracy W. Simpson.)

The COURT.—I think that calls for a conclusion which the Court must draw.

Mr. GRIFFIN.—The witness has testified concerning the claim, as to this being found in the claim. I am entitled to cross-examine the witness. I am not seeking here to examine the witness concerning the legality of the claims.

The COURT.—Do you say that this is a technical question, as to what is covered by the claims?

Mr. LOFTUS.—The affidavit deals solely with what is shown and described in the patent, and leaves the claims alone.

The COURT.—I don't care what the affidavit shows; I am only concerned with the general proposition whether it is for the witness to state what is covered by the claims, or for the Court.

Mr. GRIFFIN.—It is for the Court to state it.

The COURT.—Then I don't care what is in the affidavit; I will ignore it. [252]

Mr. GRIFFIN.—I am entitled to examine the witness as to the sundry elements of the claim and as to what the parts of the claim are. As to the total effects of the claim, that is for the Court.

Mr. TOWNSEND.—Counsel can examine as to the disclosure of the patent and the description of the drawings; in regard to exhibit 9, it is not in issue in the case, it is a self-serving model that was made years ago, and long before the patent was applied for; it does not even have the rudimentary elements of the patent. It is wholly immaterial.

(Deposition of Tracy W. Simpson.)

The COURT.—Proceed and get through with the testimony.

Mr. GRIFFIN.—Q. Your signs made for the Normal Pharmacy have means inside the sign body to illuminate the letters, haven't they?

A. Yes, sir.

Q. That sign also has a sheet metal body with openings forming the characters? A. Yes.

Q. That sign also has a sheet of translucent material covering the length and breadth of the letters inside the sign body. A. Yes, sir.

Q. And there is also a raised-letter molding around the elements of the character?

A. If you are trying to read me the elements of the claim—

Q. Is there or is there not a raised metal moulding around the elements of the character on the Normal Pharmacy sign?

A. There is a strip of lead soldered around the periphery of the letter.

Q. And that is raised from the face of the sign?

A. Yes, sir.

Q. You say you did some work to show the impossibility of making a sign according to the disclosure of the patent; what work was done?

A. I spent about half a day in the shop with several skilled artisans, endeavoring to see if it were possible to do that; I even had some drawings with me to show the impossibility [253] of it. In the patent drawing of the Hotchner 1918 patent,

(Deposition of Tracy W. Simpson.)

No. 1259237, had the person making up that drawing shown several other sections, other than the section shown in Figure 2, that would plainly have become apparent.

Q. However, you did finally make the letters which you exhibited here in court?

A. We made those letters that conform to the specifications of the patent with the exception of the misdescription portion of the patent relating to the glass covering the entire area bounded by the greatest length and breadth of the letter.

Q. Why do you say that is a misdescription?

A. Because the disclosure of the patent plainly shows that the glass lies in a pocket, which pocket is bounded on its perimeter by a portion of the raised metal molding. If I may be permitted to turn around one of those cards, we have the reverse side section; the sectional drawing that I have in my hand is exactly the same sectional drawing that might have been made by the draftsman who drew the original drawings of the Hotchner patent of 1918, provided he had sliced the sign vertically through the cross-bar of the letter H instead of doing as he has done in Figure 2—sliced the sign vertically through the main right-hand stroke of the letter H; this plainly shows that the glass of the cross-bar could only be of an extent extending from the upper limit designated by the raised border to the lower limit designated by the raised border of the cross-bar, there being a pocket in

(Deposition of Tracy W. Simpson.)

which the glass is placed. Were any other construction used, then we would have the entirely erroneous construction in which the background of the sign which is between the vertical strokes of the letter "H" and above the cross-bar pressed outwardly, which is not a disclosure of the patent.

Q. However, with respect to the letter "I," there is no misdescription, whatever, is there?

A. No, sir, not with respect to [254] the letter "I." That was the only letter.

Q. And that might be so with respect to any other letter?

A. No, sir; it could only be with respect to the letter "I." There would be a misdescription when applied to any other letter.

Q. However, there is no difficulty whatever in making exactly what is described in the patent, such, for example, as shown in Plaintiff's Exhibit 9, and it would conform to the disclosure of the letter "I"?

A. There would be no difficulty, provided the letter "I" were always produced.

Q. However, the letter "N" is shown here, and that is according to the construction of the letter "I" as shown in the patent, isn't it?

A. No, sir, because the glass in the letter "N" does not lie in the plane of the metal front.

Q. However, as to this particular claim in issue here, there is nothing said about any pocket in which the glass is placed.

(Deposition of Tracy W. Simpson.)

Mr. TOWNSEND.—The claim is the best evidence of its contents, and it is for the Court to construe it; that is calling for a legal conclusion.

The COURT.—I think so.

Mr. GRIFFIN.—Q. With respect to the Oregon Hotel sign, that sign consists of an interiorly-lighted sign, having channels with flanges at the outside of the channels extending parallel to the face of the sign body, doesn't it? A. No, sir.

The COURT.—Isn't there a photograph of the Oregon Hotel sign here?

Mr. TOWNSEND.—Yes.

The COURT.—I have one in my mind; I suppose there is one in the record, probably.

Mr. TOWNSEND.—Yes, there is, your Honor.

Mr. GRIFFIN.—Q. I will show you a photograph, which is a copy of the photograph in evidence—

The COURT.—This shows how the letters are made. [255]

Mr. GRIFFIN.—Q. Is it not a fact that those flanges are parallel to the face of the sign body?

A. No, sir, the flanges are beveled with respect to the sign body.

Q. You heard Mr. Slocum testify that those flanges were parallel—

The COURT.—Do you claim you can obtain a monopoly by patent on the form of a letter?

Mr. GRIFFIN.—Why, certainly, you can obtain a patent on the form of a letter. It would depend entirely on whether the form was patentable.

(Deposition of Tracy W. Simpson.)

There are any number of design patents on letter forms.

The COURT.—I realize that, but you see letters every place, in print and in signs, in every conceivable form. Do you claim that it is a subject of a patent, whether you call it a design patent, or any other kind of patent? It seems to me you might as well try to claim a patent on the alphabet, itself.

Mr. GRIFFIN.—We are not claiming anything of that kind. We are claiming a combination here with a series of elements.

The COURT.—Proceed with the examination.

Mr. GRIFFIN.—Q. You heard Mr Slocum testify that this sign had flanges at the outside of the channels parallel to the face of the sign body.

A. No, sir, I didn't hear him testify to that.

Q. You did not? A. No, sir.

Q. Did you ever see this sign?

A. Yes, many times.

Q. How close were you to it?

A. I have been on the sidewalk, directly beneath the sign.

Q. And that is a matter of twenty feet from the sign, isn't it, or more? A. Yes.

Q. And at that distance you could not tell whether it was parallel to the sign body, or not?

A. Yes, I could tell; those flanges are slightly beveled.

Mr. TOWNSEND.—Do you claim, Mr. Griffin,

(Deposition of Tracy W. Simpson.)

that that Oregon Hotel sign is an infringement?
[256]

Mr. GRIFFIN.—No. I claim that that is not an anticipation. The only thing that that Oregon Hotel sign is put into the record for is to show anticipation. I claim that that is not an anticipation of anything that is claimed in this case.

Q. Referring again to the Little patent, in Figure 2 of the Little patent, there is nothing in Figure 2, nor in the specifications, that would indicate that the face of that sign was in any way raised?

A. Yes, there is .

The COURT.—You can make up your own record, but these questions, to my mind, are utterly and absolutely immaterial. I don't think the form of a letter in an electrical sign differs from the form of a letter used elsewhere. I say you can make up your own record, so you will have it before an Appellate Court.

A. (Continuing.) That portion of Figure 2 in the Little Patent illustrated as "B," which is the metallic letter, as referred to in the patent description from lines 55 on, has definite thickness; it is plainly shown in Figure 2 as being cross-hatched, and, therefore, it has definite thickness, and it is plainly shown as being flanged outwardly on the face of the body of the sign. If one skilled in the art came to produce this sign at the present date, after the lapse of some 60 or 70 years, he would, instead of using wood for the background, use metal, and, in order to save weight, make it

(Deposition of Tracy W. Simpson.)

thinner. It is simply a question of degree, as to whether at the present time we would make the background relatively thin relative to the border.

Q. That is entirely your opinion on the matter, but there is nothing in the specifications to indicate that?

A. Yes, there is something in the specifications to indicate that; that portion of the specifications from line 55 to 65 explains that.

Q. What is the explanation?

A. It says: "The letters may each be made of metal cast with these beveled edges, and with flanges projecting from their flaring edges." It is that expression, "with flanges projecting from their flaring edges"—those flanges [257] must have thickness. They lie on the body of the sign; therefore, they are raised up from the body of the sign.

Q. But there is nothing said in the specifications about their being raised from the body of the sign?

A. But one would naturally infer that, from the fact that they are flanges projecting from the flaring edges. They could not be otherwise. They are plainly shown in the drawing as being cross-hatched.

Q. Further on in your affidavit, you say that certain municipalities have prohibited the use of glass in electric signs, where the body of the sign was made of glass. Would not that same difficulty be present in a sign made of the character

(Deposition of Tracy W. Simpson.)

of the flange patent, and would not that be a defect in that sign?

A. May I see the affidavit, please? I would like to see exactly what I did say.

Q. Will you read the question to the witness, Mr. Reporter?

(Question read by the reporter.)

A. My inspection of the affidavit does not show that I stated that the body of the sign was made of glass.

Q. Your affidavit says: "Within my experience I have known of municipalities which passed ordinances prohibiting the use of glass in electric signs of this character on account of the danger of breakage, and the likelihood of injury to pedestrians passing underneath." A. Yes.

Q. Would not that be a defect of this Boldes sign where the sign body is made of glass?

A. I don't understand that in the Boldes sign the entire sign body is made of glass, only that portion on the face of the sign behind the letters. A great portion of the sign made under that patent may be made of metal. By following the specifications of Boldes, by adopting any means of making the flange opaque, one could easily place sheet metal over that front and make it opaque.

Q. However, nothing of that kind is said in the patent? [258]

A. No, sir; that last phrase of mine is what one would naturally presume who was skilled in the art.

(Deposition of Tracy W. Simpson.)

Mr. GRIFFIN.—I move that the last part of the answer be stricken out as not responsive.

The COURT.—Denied.

Mr. GRIFFIN.—Q. With respect to the Prismatic Sign Company's signs, in Denver, Colorado you had no personal knowledge with respect to those signs, at all, had you? A. Yes.

Q. When did you first see them?

The COURT.—You mean he had no knowledge of them prior to the date of the application?

Mr. GRIFFIN.—Yes. A. In the year 1912.

Q. Mr. Mackenzie, who was a witness, states that such signs were not made until later than that; so it was not such a sign as is illustrated here that you saw?

Mr. TOWNSEND.—What is the warrant for that statement, Mr. Griffin? You are endeavoring to convey to the Court how to interpret Mr. Mackenzie's testimony.

The COURT.—I don't remember about the testimony of the other witness. You understand the question, do you not? A. Surely.

The COURT.—Answer it.

A. The question is misleading, because Mackenzie did testify—

The COURT.—I don't care what he testified to.

Mr. GRIFFIN.—I will withdraw the question.

Q. It was not such a sign with a raised molding as this, that you saw in 1912?

A. Yes, I was in Denver in 1912.

Q. Where did you see the sign?

(Deposition of Tracy W. Simpson.)

A. I don't recall the exact location where I saw those signs in Denver. I knew that that type of sign was erected, and I saw them in various places.

Q. How many?

A. Enough to know that that was a type of sign existing in Denver. I was in Denver in connection with a tour of various cities, looking in to various electrical matters, [259] of which signs was one.

Q. How do you fix the date as being in 1912?

A. Because Mrs. Simpson and I spent that summer in Estes Park, just north of Denver.

Q. In your affidavit you say concerning other signs: "In connection with such separate set of lights, it has long been the practice to provide a reflector which will direct the rays therein downwardly to the sidewalk"; how long have you known of such construction?

A. I cannot say as to that.

Q. You never saw anything of that kind, did you, prior to either one of the applications for a patent herein, to wit, October 19, 1914?

The COURT.—Do you claim a monopoly on the right to use a reflector to turn light down?

Mr. GRIFFIN.—The witness says here, in connection with his affidavit, and I am only seeking to cover what is claimed by the two patents, this particular claim describes the location for the lights handling the sign, and also the lights for illuminating the sidewalk.

The COURT.—Proceed.

A. I have seen such signs, particularly in Seattle.

(Deposition of Tracy W. Simpson.)

Mr. GRIFFIN.—Q. When?

A. Since I came with the Federal Company, on the Pacific Coast.

Q. That was later than October 19, 1914?

A. Yes.

Q. With respect to this sign that you made over in Oakland for the Haberdasher, and the clothing sign, carrying three letters, is it not a fact that the lower line of letters is only about four inches from the bottom of the sign?

A. As I previously testified, I am not familiar with the exact height, but I know the height it has above the top of the reflector underneath.

Q. You know that the reflectors are about 6 inches deep, don't [260] you?

A. I don't know that; I would say that generally they were about that.

Q. Then you could not testify that no light from those reflectors could go through those letters at all?

A. I can testify that no light from the top of the reflectors could possibly go through those letters, as I previously stated at yesterday's session.

Q. You just said you could not testify as to how far up they were, and you didn't know exactly the height of the letters from the bottom line; how can you testify there will be no light from those reflectors pass through the letters?

A. You have asked me to give a dimension in two ways; to give it by the difference, first measuring upward from the bottom line of the sign to the lower edge of the letters, and then measuring

(Deposition of Tracy W. Simpson.)

upwardly from the lower line of the sign to the top of the reflectors. I say to you I don't know either of those dimensions, but I do know the distance from the top of the reflector to the bottom line of letters, and the distance upward is from one-half to three-quarters of an inch. The distance from the apron downward may be five inches, ten inches, or two feet—it is immaterial.

Mr. GRIFFIN.—That is all.

Mr. TOWNSEND.—I want to offer in evidence the drawing referred to by the witness, and ask that it be marked Defendants' Exhibit "II."

(The drawing was here marked Defendants' Exhibit "II.")

Mr. GRIFFIN.—If your Honor please, I have prepared an amendment in accordance with the facts as brought out by the witness here, naming the Federal Electric Company, a California corporation, as the defendant, and I will ask to have the amendment entered and service of process either admitted or made at this time. The present witness has testified that he is the president and general manager of the Federal Electric Company. [261] I might say that the allegations of the original complaint were sufficient to meet this amendment, because it was alleged there as to the difficulty of ascertaining the exact company making the signs, and also the difficulty in ascertaining the several different companies dealing with the owners of the signs.

Mr. TOWNSEND.—This is the proposed

amended bill of complaint in which you sue only the Federal Electric Company as sole defendant?

Mr. GRIFFIN.—Yes.

Mr. TOWNSEND.—We see no objection to the amendment, your Honor. We want to get this case disposed of. It is the same, one way, as the other.

The COURT.—I can see no formal objection to it, myself. Anything further?

Mr. GRIFFIN.—That is all. If your Honor please, I would much prefer to submit this case on briefs.

The COURT.—No, I am going to dispose of it this morning. Anything you have to say you can say orally. In order to have the record complete I suppose it should be stipulated that the answer may stand as the answer to the amended complaint.

Mr. TOWNSEND.—Yes, I should have stated that.

Mr. GRIFFIN.—That is satisfactory.

(After argument by counsel.)

The COURT.—The claim that a person in this day and age can gain a monopoly on the right to use raised letters in an electric sign, or upon the mere mode employed to throw rays of light from such sign upon a sidewalk, is, to my mind, utterly unfounded.

The complaints in both cases are, therefore, dismissed. [262]

The attached statement of the evidence in the above-entitled case is hereby approved.

FRANK H. RUDKIN,

District Judge.

Jan. —, 1922.

[Endorsed]: Filed Jan. 28, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [263]

In the United States District Court, in and for the Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California Corporation,

Defendant.

Petition for Appeal and Order Allowing Same.

To the Honorable District Court of the United States, in and for the Southern Division of the Northern District of California, Ninth Circuit.

Now comes Joseph Hotchner, plaintiff in the above-entitled action, and feeling himself aggrieved by the dismissal of his complaint by this Court entered on the 9th day of Dec., 1921, hereby prays that an appeal may be allowed to him from said decree of dismissal to the United States Circuit Court of Appeals in and for the Ninth Circuit, and in con-

nection with this petition herewith presents his assignment of errors.

Your petitioner therefore prays that an order allowing said appeal be made, and that an order fixing the amount of the bond for costs be made upon the allowance of this appeal.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

The above appeal is hereby allowed.

FRANK H. RUDKIN,
Judge.

San Francisco, Calif., December 27, 1921.

Receipt of a copy of the within appeal petition is hereby admitted this 27th day of Dec., 1921.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,
Attys. for Defendant.

[Endorsed]: Filed Dec. 28, 1921. W. B. Mal-
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[264]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Defendant.

Assignment of Errors.

Now comes the plaintiff Joseph Hotchner, by his attorney, and in connection with his appeal says the Honorable District Court erred in dismissing the complaint herein as follows:

1. In holding that patent No. 1,259,237 is void when only claim 4 was in issue in said action.

2. In holding that patent No. 1,315,187 is void when only claims 1, 2 and 3 were in issue herein.

3. In holding that claim 4 of patent No. 1,259,237 is void.

4. In holding that claims 1, 2 and 3 of Patent No. 1,315,187 are void.

5. In holding that even if said patents are valid that neither of them are infringed.

6. In holding that combination claims are void because their several elements may be found separately in the prior art.

7. In holding that any patent in the record negatives the patentable novelty of the claims in issue in either patent herein.

8. In holding that any public use of a sign alleged to have anticipated the claims of either or both patents was sufficient but had to be proven.

9. In holding that any public use of any sign offered in evidence herein was an anticipation of any claim in issue in either patent.

10. In making the following decision: "The Claim that a [265] person in this day and age can gain a monopoly on the right to use raised letters in an electric sign, or upon the mere mode em-

ployed to throw rays of light from such sign upon a sidewalk is to my mind utterly unfounded. The complaint in both cases are therefore dismissed.”

11. In dismissing the complaint at the cost of plaintiff.

12. In not holding both of said patents valid and infringed.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

San Francisco, Calif., December 27, 1921.

Receipt of a copy of the within assignment of errors is hereby admitted this 27th day of Dec., 1921.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 28, 1921. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[266]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation.

Defendant.

Order Fixing Cost Bond.

In the above-entitled cause the plaintiff having filed his petition for an order allowing an appeal together with an assignment of errors.

Now, therefore, upon motion of Carlos P. Griffin, solicitor for plaintiff, and said appeal having been heretofore allowed from the decree dismissing the complaint in the above-entitled case, it is hereby ordered that the amount of plaintiff's cost bond upon said appeal be, and the same is hereby fixed in the sum of One Thousand (\$1000) Dollars.

It is further ordered that upon the giving of such bond approved by the Court that a certified copy of the transcript of the records and proceedings herein as submitted by the parties and approved by the Court may be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

FRANK H. RUDKIN,
District Judge.

San Francisco, Calif., Dec. 27, 1921.

Receipt of a copy of the within order fixing cost bond is hereby admitted this 27th day of Dec., 1921.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,
Attorneys for Defendant. [267]

[Endorsed]: Filed Dec. 28, 1921. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[268]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Defendant.

Bond on Appeal of Joseph Hotchner.

KNOW ALL MEN BY THESE PRESENTS:
That National Surety Company, a corporation duly
licensed to transact a suretyship business in the
State of California, is HELD AND FIRMLY
BOUND in the penal sum of One Thousand
(\$1,000) Dollars, to be paid to the Federal Electric
Company, its successors or assigns, for which pay-
ment, well and truly to be made, the National Surety
Company binds itself, its successors and assigns,
firmly by these presents.

The conditions of the foregoing bond is such that
WHEREAS, the said Joseph Hotchner, plaintiff
in the above-entitled suit, has taken an appeal to the
United States Circuit Court of Appeals for the
Ninth Circuit, to reverse a decree made and en-
tered on the 9th day of December, 1921, by the Dis-
trict Court of the United States in and for the
Northern District of California, Second Division,
in the above-entitled suit, wherein the complaint is
dismissed with costs.

NOW, THEREFORE, the condition of the foregoing obligation is such that if said Joseph Hotchner shall prosecute his said appeal to effect and shall answer all damages and costs, if he shall fail to make his plea good, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said National Surety Company has caused this obligation to be signed by its duly authorized [269] officers at San Francisco, California, and its corporate seal to be hereunto affixed, this 28th day of December A. D. 1921.

[Seal] NATIONAL SURETY COMPANY.

By F. J. CRISP,

Resident Vice-president.

By A. C. ROBESON,

Resident Asst. Secretary.

The premium charged for this bond is \$10.00 per annum.

Approved:

FRANK H. RUDKIN,

Judge.

[Endorsed]: Filed Dec. 28, 1921. W. B. Mal-
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[270]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation.

Defendant.

**Stipulation for Record on Appeal and Hearing of
Appeal.**

The above case having been consolidated, heard, tried and determined at the same time upon the same testimony, evidence, proofs and records with the case of Joseph Hotchner vs. R. E. Morgan and P. C. Long, in Equity No. 507, and

WHEREAS, in the opinion of the parties hereto, the transcript of the record on appeal should embody substantially the entire record of proceedings and testimony in the words of the respective witnesses, evidence taken, adduced or introduced during the trial of said cases,

NOW, THEREFORE, subject to the approval of the Court, it is hereby stipulated and agreed between counsel for the respective parties, as follows:

1. That the appeals taken by the plaintiff in both of the above-entitled cases to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree of dismissal, heretofore made and entered in said cases, may and shall be heard upon one and the same transcript of record.

2. Said transcript of record on appeal shall include the statement of the testimony herewith submitted to the Clerk, for the approval of the Trial Judge and for certification to the [271] Clerk of the Court of Appeals.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

CHAS. E. TOWNSEND,
Attorney for Defendant.

Dated January 19, 1922.

[Endorsed]: Filed Jan. 28, 1922. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[272]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

Petition for Appeal and Order Allowing Same.

To the Honorable District Court of the United
States, in and for the Southern Division of the
Northern District of California, Ninth Circuit.

Now comes Joseph Hotchner, plaintiff in the
above-entitled action and feeling himself aggrieved
by the dismissal of his complaint by this Court en-
tered on the 9th day of Dec., 1921, hereby prays
that an appeal may be allowed to him from said

decree of dismissal to the United States Circuit Court of Appeals in and for the Ninth Circuit, and in connection with this petition herewith presents his assignment of errors.

Your petitioner therefore prays that an order allowing said appeal be made, and that an order fixing the amount of the bond for costs be made upon the allowance of this appeal.

CARLOS P. GRIFFIN,

Attorney for Plaintiff.

The above appeal is hereby allowed.

FRANK H. RUDKIN,

Judge.

San Francisco, Calif., December 27, 1921.

Receipt of a copy of the within appeal petition is hereby admitted this 27th day of Dec., 1921.

CHAS. E. TOWNSEND,

WM. A. LOFTUS,

Attorneys for Defendants.

[Endorsed]: Filed Dec. 28, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[273]

In the United States District Court, in and for the Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

Assignment of Errors.

Now comes the plaintiff Joseph Hotchner, by his attorney, and in connection with his appeal says the Honorable District Court erred in dismissing the complaint herein as follows:

(1) In holding that Patent No. 1,259,237 is void when only claim 4 was in issue in said action.

(2) In holding that claim 4 of Patent No. 1,259,237 is void.

(3) In holding that even if said patent is valid, it is not infringed.

(4) In holding that combination claims are void because their several elements may be found separately in the prior art.

(5) In holding that any patent in the record negatives the patentable novelty of the claim in issue in the patent herein.

(6) In holding that any public use of a sign alleged to have anticipated the claim of the patent herein was sufficient but had to be proven.

(7) In holding that any public use of any sign offered in evidence herein was an anticipation of the claim in issue in the patent. [274]

(8) In making the following decision: "The claim that a person in this day and age can gain a monopoly on the right to use raised letters in an electric sign, or upon the mere mode employed to throw rays of light from such sign upon a sidewalk is to my mind utterly unfounded. The complaints in both cases are therefore dismissed."

(9) In dismissing the complaint at the cost of plaintiff.

(10) In not holding said patent valid and infringed.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

San Francisco, Calif., December 27, 1921.

Receipt of a copy of the within assignment of errors is hereby admitted this 27th day of Dec., 1921.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,
Attorneys for Defendants.

[Endorsed]: Filed Dec. 28, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [275]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,
Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,
Defendants.

Order Fixing Cost Bond.

In the above-entitled cause the plaintiff having

filed his petition for an order allowing an appeal together with an assignment of errors.

Now, therefore, upon motion of Carlos P. Griffin, solicitor for plaintiff, and said appeal having been heretofore allowed from the decree dismissing the complaint in the above-entitled case, it is hereby ordered that the amount of plaintiff's cost bond upon said appeal be, and the same is hereby fixed in the sum of Five Hundred (\$500) Dollars.

It is further ORDERED that upon the giving of such a bond approved by the Court that a certified copy of the transcript of the records and proceedings herein as submitted by the parties and approved by the Court may be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

FRANK H. RUDKIN,
District Judge.

San Francisco, Calif., December 27, 1921.

Receipt of a copy of the within Order Fixing Cost Bond is hereby admitted this 27th day of December, 1921.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,
Attorneys for Defendants.

[Endorsed]: Filed Dec. 28, 1921. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[276]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

MORGAN and LONG,

Defendants.

Bond on Appeal of Joseph Hotchner.

KNOW ALL MEN BY THESE PRESENTS:

That National Surety Company, a corporation duly licensed to transact a suretyship business in the State of California, is **HELD AND FIRMLY BOUND** in the penal sum of Five Hundred (\$500.00) Dollars, to be paid to Morgan and Long, their successors or assigns, for which payment, well and truly to be made, the National Surety Company bind itself its successors and assigns, firmly by these presents.

The condition of the foregoing bond is such that

WHEREAS, the said Joseph Hotchner, plaintiff in the above-entitled suit, has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse a decree made and entered on the 9th day of December, 1921, by the District Court of the United States in and for the Northern District of California, Second Division, in the above-entitled suit, wherein the complaint is dismissed with costs.

NOW, THEREFORE, the condition of the foregoing obligation is such that if said Joseph Hotchner shall prosecute his said appeal to effect and shall answer all damages and costs, if he shall fail to make his plea good, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said National Surety Company has caused this obligation to be signed by its duly authorized officers at San Francisco, California, and its corporate [277] seal to be hereunto affixed, this 28th day of December, A. D. 1921.

[Seal] NATIONAL SURETY COMPANY.

By F. J. CRISP,

Resident Vice-president.

By A. C. ROBESON,

Resident Asst. Secretary.

The premium charged for this bond is \$10.00 per annum.

Approved.

FRANK H. RUDKIN,

Judge.

[Endorsed]: Filed Dec. 28, 1921. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[278]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

**Stipulation for Record on Appeal and Hearing of
Appeal.**

The above case having been consolidated, heard, tried and determined at the same time upon the same testimony, evidence, proofs and records with the case of Joseph Hotchner vs. Federal Electric Company, a California corporation, In Equity—No. 577, and

WHEREAS, in the opinion of the parties hereto, the transcript of the record on appeal should embody substantially the entire record of proceedings and testimony in the words of the respective witnesses, evidence taken, adduced or introduced during the trial of said cases,—

NOW, THEREFORE, subject to the approval of the Court it is hereby stipulated and agreed between counsel for the respective parties, as follows:

1. That the appeals taken by the plaintiff in both of the above-entitled cases to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree of dismissal, heretofore made and en-

tered in said cases, may and shall be heard upon one and the same transcript of record.

2. Said transcript of record on appeal shall include the statement of the testimony herewith submitted to the Clerk, for the approval of the Trial Judge and for certification [279] to the Clerk of the Court of Appeals.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

CHAS. E. TOWNSEND,
Attorney for Defendants.

Dated January 19, 1922.

[Endorsed]: Filed Jan. 28, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [280]

In the United States District Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Defendant.

Praeceptum for Transcript of Record.

Please incorporate in the record on appeal herein the following documents and entries:

1. The docket entries.

2. The amended bill of complaint in Case No. 577 and the complaint in Case No. 507.

3. The answer in each case.

4. The stipulation statement of the testimony.

5. The stipulation concerning the hearing of the cases of Joseph Hotchner vs. Federal Electric Company No. 577, and against R. E. Morgan and P. C. Long No. 507 upon one printed record.

6. The decision of the Judge.

7. The decree of dismissal in both cases.

8. The appeal petition and notice thereof.

9. The assignment of errors.

10. The order fixing the amount of the appeal bond, but which bond need not be printed.

11. The citation on appeal.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

Dated January 19, 1922.

Receipt of a copy of the within praecipe is hereby
[281] admitted this 19th day of Jan., 1922.

CHAS. E. TOWNSEND,
Attorney for Deft.

[Endorsed]: Filed Jan. 19, 1922. W. B. Mal-
in, Clerk. By J. A. Schaertzer, Deputy Clerk.
[282]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California Corporation,

Defendant.

and

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN et al.,

Defendants.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing two hundred eighty-two (282) pages, numbered from 1 to 282, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled suits, as enumerated in the praecipe for record on appeal, as the same remains of record and on file in the office of the clerk of said court,

and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$125.40; that said amount was paid by the plaintiff; and that the original citations issued in said suits are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 15th day of March, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern District of California.

By J. A. Schaertzer. [283]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Federal Electric Company, a California Corporation,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein JOSEPH HOTCHNER, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should

not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, holding the United States District Court, for the Northern District of California, this 28th day of December, A. D. 1921.

FRANK H. RUDKIN,
United States District Judge. [284]

Service of a copy of the within Citation on Appeal is hereby admitted this 19th day of January, 1922.

CHAS. E. TOWNSEND,
Attorney for Defendant.

[Endorsed]: No. 577. United States District Court for the Northern District of California. Joseph Hotchner, Appellant, vs. Federal Electric Company, a California Corporation. Citation on Appeal. Filed Jan. 19, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.
The President of the United States, to R. E. Morgan and P. C. Long, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an

order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein JOSEPH HOTCHNER is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, holding the United States District Court, for the Northern District of California this 28th day of December, A. D. 1921.

FRANK H. RUDKIN,

United States District Judge. [285]

Service of a copy of the within Citation on Appeal is hereby admitted this 19th day of January, 1922.

CHAS. E. TOWNSEND,

Attorney for Defendant.

[Endorsed]: No. 507. United States District Court for the Northern District of California. Joseph Hotchner, Appellant, vs. R. E. Morgan and P. C. Long. Citation on Appeal. Filed Jan. 19, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Hotchner, Appellant, vs. Federal Electric Company,

a California Corporation, Appellee, and Joseph Hotchner, Appellant, vs. R. E. Morgan and P. C. Long, Appellees. Transcript of Record. Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Received March 15, 1922.

F. D. MONCKTON,
Clerk.

Filed April 6, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,
Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,
Defendants.

**Order Extending Time to and Including February
28, 1922, to File Record and Docket Cause.**

Good cause appearing therefor, it is ordered that plaintiff be given to and including February 28th,

1922, within which to file the record in the above-entitled case.

WM. W. MORROW,
Circuit Judge.

Dated January 27, 1922.

In the United States Circuit Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

Affidavit of Carlos P. Griffin.

State of California,
City and County of San Francisco.

Carlos P. Griffin, being duly sworn, deposes and says that he is the attorney for plaintiff in the above-entitled case; that he has prepared and filed with the clerk all of the necessary documents to perfect the appeal in the above-entitled case, but that owing to the fact that Judge Rudkin, who tried the case, has left this jurisdiction, it was necessary to send the statement of evidence to him for his signature, but that the same has not been returned to the clerk of this court at the present time.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

Dated January 27, 1922.

Subscribed and sworn to before me this 27th day of January, 1922.

[Seal]

JOHN L. MURPHY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 507. In the U. S. Circuit Court, State of California, County of San Francisco. Joseph Hotchner, Plaintiff, vs. R. E. Morgan and P. C. Long, Defendants. Order Extending Time. Filed Jan. 27, 1922. F. D. Monckton, Clerk. Re-filed April 6, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court, in and for the Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California Corporation,

Defendant.

Order Extending Time to and Including February 28, 1922, to File Record and Docket Cause.

Good cause appearing therefor, it is ordered that plaintiff be given to and including February 28th, 1922, within which to file the record in the above-entitled case.

WM. W. MORROW,

Circuit Judge.

San Francisco, Calif., January 27, 1922. *W. W. Morrow*

In the United States Circuit Court, in and for the
Ninth Circuit, Northern District of California.

IN EQUITY—No. 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Defendant.

Affidavit of Carlos P. Griffin.

State of California,

City and County of San Francisco,—ss.

Carlos P. Griffin, being duly sworn, deposes and says that he is the attorney for plaintiff in the above-entitled case; that he has prepared and filed with the clerk all of the necessary documents to perfect the appeal in the above-entitled case, but that owing to the fact that Judge Rudkin, who tried the case, has left this jurisdiction, it was necessary to send the statement of evidence to him for his signature, but that the same has not been returned to the clerk of this court at the present time.

Dated January 27, 1922.

CARLOS P. GRIFFIN,

Attorney for Plaintiff.

Subscribed and sworn to before me this 27th day of January, 1922.

[Seal]

JOHN L. MURPHY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 577. In the U. S. Circuit Court, State of California, County of San Francisco, Joseph Hotchner, Plaintiff, vs. Federal Electric Company, a California Corporation, Defendant. Order Extending Time.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 27, 1922. F. D. Monckton, Clerk. Re-field Apr. 6, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, in and for the Ninth Circuit, Northern District of California.

IN EQUITY—Nos. 507 and 577.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

Order Extending Time to and Including April 28, 1922, to File Record and Docket Cause.

Upon the annexed affidavit it is hereby ordered that plaintiff have to and including April 28th,

1922, within which to file the printed record in the above-entitled case.

WM. W. MORROW,
Circuit Judge.

Dated San Francisco, Calif., February 27, 1922.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit, Northern District
of California.

IN EQUITY—No. 507.

JOSEPH HOTCHNER,

Plaintiff,

vs.

R. E. MORGAN and P. C. LONG,

Defendants.

Affidavit of Carlos P. Griffin.

State of California,

City and County of San Francisco,—ss.

Carlos P. Griffin, being duly sworn, deposes and says that he has diligently endeavored to obtain the necessary printed copies of patents for use in preparing the printed record in the above-entitled case, but that he is advised by the Patent Office that over two hundred copies are out of print at the present time, and that they will be reprinted by the Patent Office in about five weeks.

CARLOS P. GRIFFIN,
Attorney for Plaintiff.

Dated February 27, 1922.

Subscribed and sworn to before me, a notary public, this 27th day of February, 1922.

[Seal] CHAS. T. STANLEY,
Notary public in and for the City and County of
San Francisco, State of California.

[Endorsed]: (Original.) No. 507. In the Circuit Court of Appeals, 9th Circuit, State of California, County of San Francisco. Joseph Hotchner, Plaintiff, vs. R. E. Morgan and P. C. Long, Defendants. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including April 28, 1922, to File Record and Docket Cause. Filed Feb. 27. 1922. F. D. Monckton, Clerk. Re-filed Apr. 6, 1922. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 1.

No. 1259237.

THE UNITED STATES OF AMERICA.

To All to Whom These Presents Shall Come.

WHEREAS**JOSEPH HOTCHNER,**

of

San Francisco, California,

has presented to the Commissioner of Patents a petition praying for the grant of Letters Patent for an alleged new and useful improvement in

ILLUMINATED SIGNS,

a description of which invention is contained in the specifications of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided, and

WHEREAS upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now therefore these Letters Patent are to grant unto the said Joseph Hotchner, his heirs or assigns for the term of seventeen years from the twelfth day of March, one thousand nine hundred and eighteen, the exclusive right to make, use and vend the said invention throughout the United States and the territories thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this twelfth

day of March, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-second.

[Seal]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Plff. Exhibit 1. Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

1,259,237.

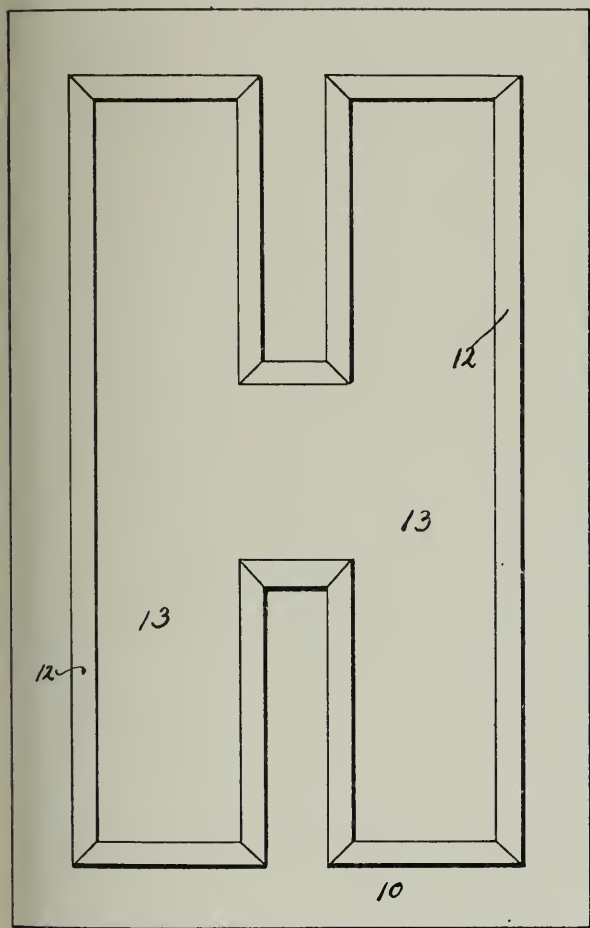


FIG. 1.

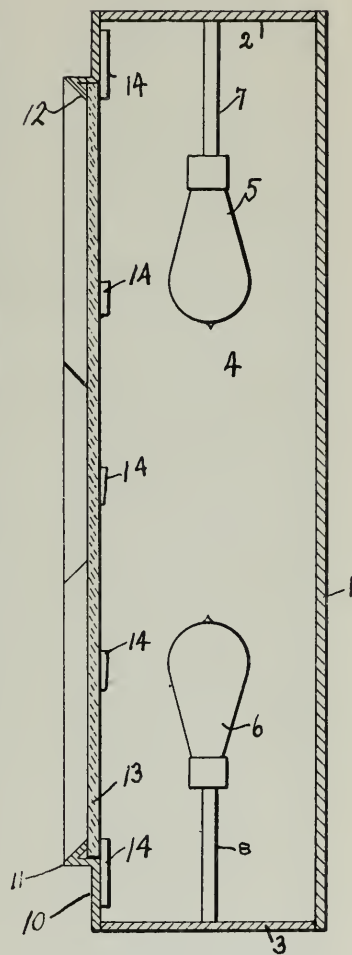


FIG. 2.

FIG. 3.

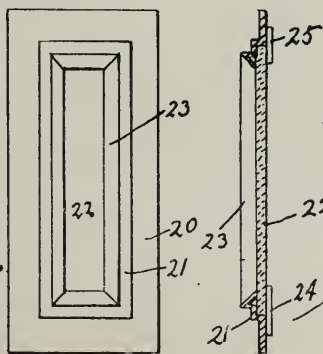


FIG. 4.

WITNESSES:

A. H. Kephart
H. E. Kephart

INVENTOR.

J. Hotchner

BY

Charles P. Griffin
ATTORNEY.

UNITED STATES PATENT OFFICE

JOSEPH HOTCHNER, OF SAN FRANCISCO, CALIFORNIA.

ILLUMINATED SIGN.

1,259,237.

Specification of Letters Patent.

Patented Mar. 12, 1918.

Application filed October 19, 1914. Serial No. 867,416.

To all whom it may concern:

Be it known that I, JOSEPH HOTCHNER, a citizen of the United States, residing at San Francisco, in the county of San Francisco, State of California, have invented new and useful Illuminated Signs, of which the following is a specification in such full and clear terms as will enable those skilled in the art to construct and use the same.

This invention relates to illuminated signs and its object is to produce a sign which gives the appearance of an ornamental sign by day as well as a good effect at night when illuminated.

Another object of the invention is to produce a sheet metal letter having a translucent backing through which the light can pass for night illumination which backing is easily removable for cleaning, or which may be easily renewed when injured.

An embodiment of the invention is shown in the drawing in which the same reference numeral is applied to the same portion throughout, but I am aware that there are many modifications thereof.

Figure 1 is a front view of a letter constructed in accordance with this invention.

Fig. 2 is a vertical sectional view of the letter showing the interior construction of the sign.

Fig. 3 is a front elevation of a modified form of the letter, and

Fig. 4 is a vertical sectional view of the modified form of letter shown in Fig. 3.

The numeral 1 indicates the sign back, 2 the top, 3 the bottom and 4 the end of a box making up a complete sign with a single letter, although it will be understood by those skilled in the art that as many letters may be assembled on one back as is desired, but the letter construction is the important feature of the present case. Lamps 5 and 6 are suitably supported on rods 7 and 8 in a suitable position within the sign to illuminate the letter.

The front or body of the sign is indicated at 10 and consists of sheet metal pressed outwardly at 11 to produce a molding having an outwardly flared surface at 12, which molding will have the shape of the desired letter. This molding is pressed outwardly far enough so that a suitable sheet of translucent material 13 may be inserted under the molding and is held in place in the plane of the sheet metal front 10 by strips of sheet metal 14, soldered or otherwise se-

cured to the inside of the front 10. Said strips of metal are secured to the inside of the front and may be straightened up against the translucent material to hold it in place against the underside of the molding when the sign is put together. The sheet of translucent material is not cut out the shape of the letter but covers the entire area defined by the length and breadth of the letter or character. By thus making the sheet of translucent material cover the entire outer area of the character without conforming to the outline of the letter, the cost of manufacture is reduced while the structure is actually stronger.

In Figs. 3 and 4 there is illustrated a modified form of the invention in which the numeral 20 represents the letter plate. This letter plate is raised at 21 entirely around the letter the thickness of the translucent or transparent plate 22, which is inserted therein under the letter while the edges of the letter have the raised bevel therearound as indicated at 23. Clips 24 and 25 soldered to the back of the letter plate hold the translucent plate 22 in place.

An advantage of the construction here shown is that substantially all of the letters have given sizes so that when a replacement is desired the translucent plate may be cut to the precise size of the letter in which the replacement is desired to be made.

The clips are put on before the glass is assembled, after which the clips are straightened out so they bear on the glass as shown in Figs. 2 and 4.

Having thus described my invention what I claim as new and desire to secure by Letters Patent of the United States, is as follows, modifications within the scope of the claims being expressly reserved:

1. A sign comprising a box-like structure having a front formed of a sheet metal body having an outline molding pressed therefrom to define a character, a sheet of translucent material lying in the plane of the sheet metal front in back of the character, clips to hold the translucent material in place, and means within the structure to illuminate the translucent material.

2. A sign comprising a box-like structure having a front formed of a sheet metal body having a raised portion pressed therefrom to form an outline molding defining a character, a sheet of translucent material lying in the plane of said metal front in back of

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the character, clips to hold the translucent material in place, and means within the structure to illuminate the translucent material.

3. A sign comprising a box-like structure having a front formed of a sheet metal body having a raised outline molding pressed therefrom to define a character, said molding forming an outwardly flaring bevel, a sheet of translucent material lying substantially in the plane of the metal front in back of the character, clips to hold the translucent material in place, and means within the structure to illuminate the translucent material.

4. A sign comprising a sheet metal body with a raised molding formed therein to de-

fine a character, a sheet of translucent material covering the entire area of the space bounded by the greatest length and breadth of the letter back of the same, the edges of the molding toward the center of the elements of the letter lying substantially in contact with the translucent material, and means to illuminate the translucent material and through which the light shines.

In testimony whereof I have hereunto set my hand this 15th day of September, A. D. 1914, in the presence of the two subscribed witnesses.

JOSEPH HOTCHNER.

Witnesses:

C. P. GRIFFIN,

L. H. ANDERSON.

Plaintiff's Exhibit No. 2.

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Plff. Exhibit 2. Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

1,315,187.

Patented Sept. 2, 1919.

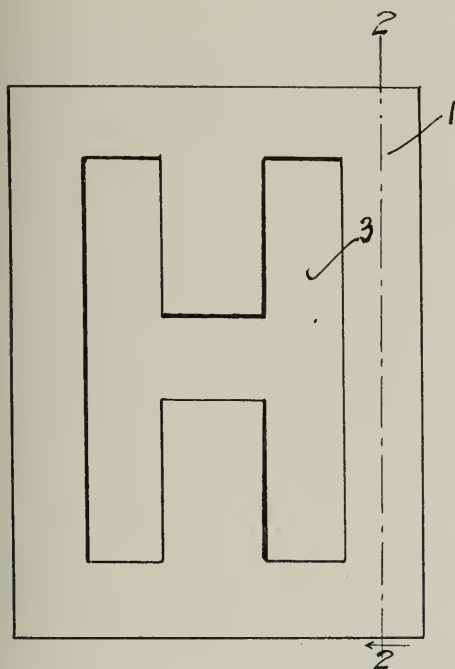


Fig. 1

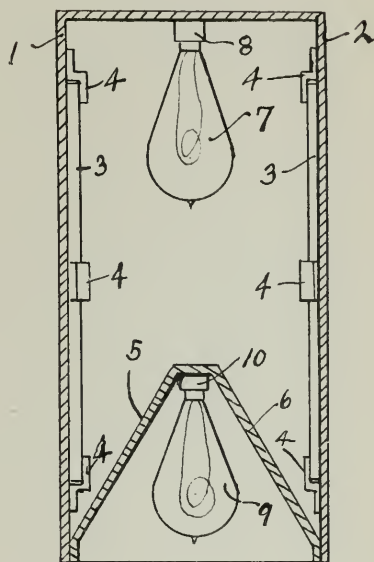


Fig. 2.

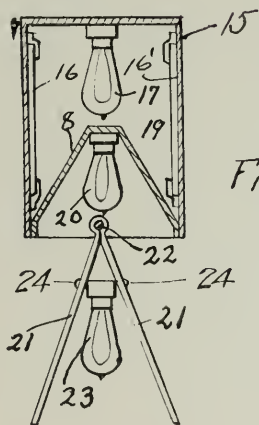


Fig. 3

WITNESSES:

A. H. Kephart,
Bachford Smith

INVENTOR.

J. Hotchner.

BY

Carlos P. Griffin
ATTORNEY

UNITED STATES PATENT OFFICE.

JOSEPH HOTCHNER, OF SAN FRANCISCO, CALIFORNIA.

ILLUMINATED SIGN.

1,315,187.

Specification of Letters Patent.

Patented Sept. 2, 1919.

Application filed October 19, 1914. Serial No. 867,415.

To all whom it may concern:

Be it known that I, JOSEPH HOTCHNER, a citizen of the United States, residing at San Francisco, in the county of San Francisco, State of California, have invented a new and useful Illuminated Sign, of which the following is a specification in such full and clear terms as will enable those skilled in the art to construct and use the same.

This invention relates to an illuminated sign of the type known as a transparency and its object is to provide means whereby the sidewalk and store front may be adequately illuminated, without at the same time destroying the effect of the sign.

It will be understood by those skilled in the art that transparencies are not as brightly illuminated as signs having outside lights, so that if outside lights are used to illuminate the sidewalk they kill the effect of the transparency. Therefore, in order to effectually illuminate the sidewalk it becomes necessary to conceal the sidewalk lights from the person looking at the sign from a distance.

Another object of the invention is to make a double use of the reflector used in such signs, one side reflecting the light through the letters while the other side reflects the light to the street from other lamps.

An embodiment of the invention is shown in the drawing in which the same reference numeral is applied to the same portion throughout, but I am aware that there are many modifications thereof.

Figure 1 is a front elevation of a letter constructed in accordance with this invention.

Fig. 2 is a vertical sectional view of the letter on the line 2-2 Fig. 1 looking in the direction of the arrow.

Fig. 3 is a view in section of a modified form of the invention in which a secondary sign is suspended from the first sign.

The numeral 1 represents one side of a box sign body and 2 the opposite side thereof, said body being commonly constructed of sheet metal. The letter is cut out of the metal sides and a plate of translucent material 3 is placed in position inside the sign body, clips 4 secured to the inside of the sign body holding the plates in place.

Connected with the bottom of the side pieces are two reflectors 5 and 6 which direct the light from the lamp 7 supported by the

socket 8 through the plates 3. The reflectors are suitably painted within and without to reflect the light and between them is placed a lamp 9 supported by the socket 10.

The socket 10 is secured to the underside of the top of the reflectors and each socket is connected with a suitable source of electric current supply to illuminate the several lamps of which there may be any desired number. It will be seen that as the lamp 9 is placed between the two reflectors 5 and 6 that it cannot be seen at some distance from the sign, while the angle of the reflectors can be varied to illuminate as wide a place on the sidewalk as may be desired.

It will also be seen that no matter how brilliant the sidewalk illumination is there will be practically no loss of effect in the transparency.

It will be understood by those familiar with the sign business that when a sign is ordered that the person purchasing the same often desires to add a line giving some other feature in connection with his place of business other than that which he originally delineated upon the sign and this, the sign illustrated in Fig. 3, is especially adapted for that purpose.

In this form of the invention the sign body 15 is substantially the same as the sign body shown in Figs. 1 and 2, and it is provided with two characters 16 and 16' which are illuminated by means of the lamp 17 placed within the sign body. At the bottom of the sign body there are two reflectors 18 and 19, below which there is a lamp 20, while suspended from the lower portion of the sign is a sheet metal sign 21 bent over a rod 22 so that it presents two characters for illumination by the lamp 20, and in order to increase the sidewalk lighting effect a lamp 23 is supported between the two sides of the inverted V shaped sign 21, suitable screws 24 being used to connect the socket to the sign 21.

It will be understood that the lighting effect of this sign is the same as the previous one, since in no event do the lights shine directly into the eyes of the observer and therefore do not kill the effect of the sign as a transparency.

Having thus described my invention what I claim as new and desire to secure by Letters Patent of the United States, is as fol-

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 lows, modifications within the scope of the claims being expressly reserved:

1. In an illuminated sign, a sign body, a lamp located within said body to illuminate a character carried thereby, a lamp below the first lamp to illuminate the sidewalk below the sign, and means intercepting the rays from the latter light when the sign is observed at some distance horizontally therefrom.

2. In an illuminated sign, a sign body, a translucent character carried thereby, a concealed light to illuminate said translucent character, a reflector below the lamp to direct the light from said lamp through the character, and another light upon the opposite side of said reflector from said first lamp for illuminating the sidewalk below the sign.

3. In an illuminated sign, a sign body, a translucent character carried thereby, a lamp within the sign body to illuminate the character, a reflector to direct the light from said lamp through the character, and another light adjacent said reflector so placed that the rays therefrom will strike the opposite side of the reflector and illuminate the sidewalk below the sign.

4. In an illuminated sign, a sign body having translucent characters on both faces thereof, a lamp within the sign, a pair of reflectors adapted to throw the rays of light

from said lamp through the characters, and another light between the two reflectors and from which reflectors the rays are reflected to the sidewalk.

5. In an illuminated sign, a sign body, translucent characters carried thereby, a lamp within the sign body to illuminate the characters, a reflector within the sign body to assist in the illumination of the characters, a second sign suspended from the lower portion of the first sign body, and a second lamp within the first sign upon the opposite side of the reflector from the first lamp and cooperating with the reflector to illuminate the sign suspended from the first sign body.

6. In an illuminated sign, a sign body, a lamp therein, translucent characters carried thereby, an inverted V-shaped sign supported from the lower edge of the first sign body, a lamp within the sign body to illuminate characters placed on the outside of the inverted V shaped sign, and another lamp between the sides of the inverted V shaped sign to illuminate the sidewalk.

In testimony whereof I have hereunto set my hand this 13th day of October A. D. 1914, in the presence of the two subscribed witnesses.

JOSEPH HOTCHNER.

Witnesses:

C. P. GRIFFIN,

L. H. ANDERSON.

Defendants' Exhibit "C."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "C." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

935,803.

Patented Oct. 5, 1909.

Fig:1

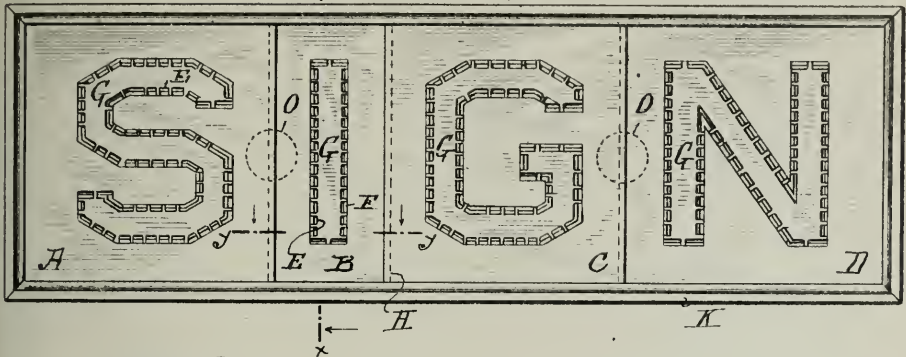
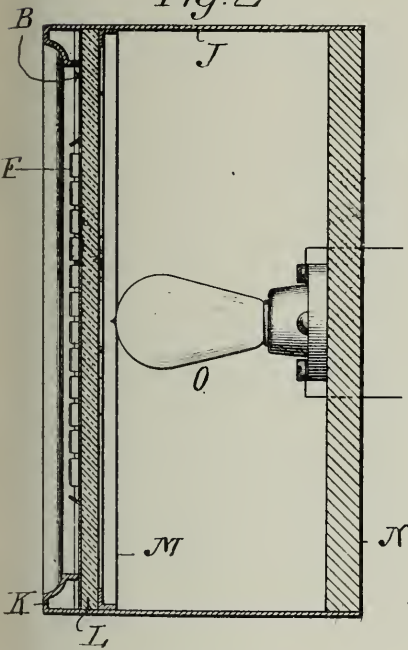


Fig:2



E, Fig:3

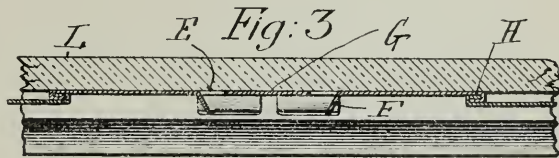


Fig:4

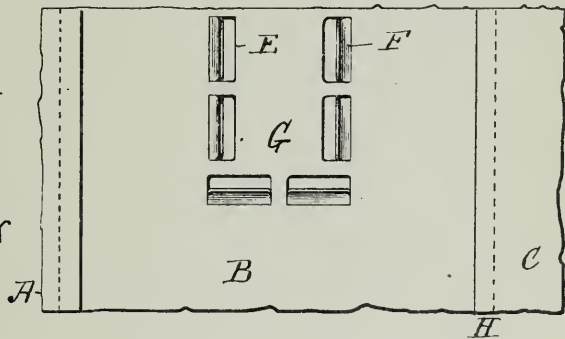
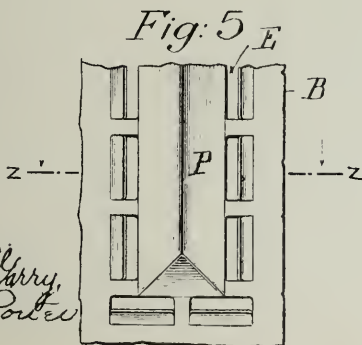
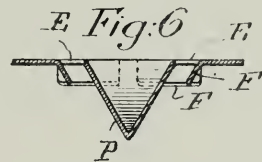


Fig: 5, E



E Fig: 6



Witnesses:
May J. Mc Larry,
Gertrude T Porter

Inventor
Thomas E. Murray
By his Attorney
Saml. Benjamin

UNITED STATES PATENT OFFICE.

351

THOMAS E. MURRAY, OF NEW YORK N. Y.

ELECTRIC SIGN.

935,803.

Specification of Letters Patent.

Patented Oct. 5, 1909.

Application filed October 24, 1908. Serial No. 459,344.

To all whom it may concern:

Be it known that I, THOMAS E. MURRAY, a citizen of the United States, residing at New York, in the county of New York and State of New York, have invented a certain new and useful Improvement in Electric Signs, of which the following is a specification.

The invention relates to electric signs and consists in a plate having on its surface a plurality of reflectors following the outline of a letter or character, and inclined to reflect light upon the portion of said surface included within said outline: also in the construction of said plate with openings following said outline, through which openings the light rays pass to said reflectors: also in the construction whereby said reflectors are formed upon the outer edges of said openings by striking up the metal of the plate: and also in the various combinations set forth in the claims.

In the accompanying drawings—Figure 1 is a front elevation of my electric sign. Fig. 2 is a cross section on the line *a, a*, of Fig. 1. Fig. 3 is a longitudinal section on the line *y, y*, of Fig. 1. Fig. 4 is an enlarged plan view of the lower part of the letter I in Fig. 1. Fig. 5 is a plan view of a portion of the letter I of Fig. 1, showing the body part of the letter raised above the general surface of the plate. Fig. 6 is a section on the line *z, z*, of Fig. 5.

Similar letters of reference indicate like parts.

The sign may comprise a single plate A, preferably of sheet metal, bearing a character, letter or word, or a plurality of such plates as A, B, C, D, each bearing a letter or character, and arranged to form a word or composite design. In each plate is formed a plurality of openings E following the outline of the letter or character. Said openings may be quadrangular in form, and produced by cutting the metal on three sides, leaving it attached on its fourth side or outer edge. The attached piece F is then bent outwardly and in inclined position, so that its inner inclined surface forms a reflector, whereby light, coming from the rear side of the plate through the opening E, is reflected upon the portion G of the plate surface which is included within the outline of the letter or character. In this way the said letter or character becomes defined not only by the light seen directly through the

openings E, but also by the reflected light cast upon the body portion of the outlined letter. This body portion may be painted white or polished so as again to reflect the rays to the eye of the observer, the remainder of the plate outside the reflectors F being preferably blackened. The inner surfaces of the reflectors F may also be whitened or polished so as to increase their reflecting capacity.

While it is preferable and cheaper to produce the reflectors F by striking up the material of the plate as described, it is obvious that they can be made separately and secured in suitable proximity to the openings in any desired way.

Where several plates are used to make up the sign, they may be connected by bending over and interlocking the meeting edges, as shown at H, Fig. 3. The plate is, or the plates are then inserted in a box J having on its front edge a frame K, against which said plates bear. In rear of the plates may be inserted a plate L of glass or other transparent medium, which is held in place by the inserted flanged frame M. Within the box and held in any desired way, as by attachment to the backboard N, I place a suitable number of glow lamps O. (dotted lines, Fig. 1) the light rays from which pass through the openings E and are reflected as before described, upon the body portions of the letters or characters. The letters or characters may be made to appear of any desired color by using plates L of colored glass, or by making the bulbs of the glow lamps O of colored glass. The glass plates L serve the further function of preventing rain or moisture from entering the box J through the openings E.

Instead of leaving the portion of the plate surface, which is outlined by the openings E, flat, I may make it in relief and of any desired cross sectional shape. Thus in Figs. 5 and 6, I show the electric body in pyramidal form having sides P inclined preferably at the same angle as the reflectors F.

I claim:

1. A plate having a plurality of openings following the outline of a letter or character, and a plurality of inclined reflectors disposed on one side of said plate, and constructed to receive light rays coming through said openings and reflect the same upon the portion of the plate surface included within said outline.

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2. In an electric sign, a plate having a plurality of openings following the outline of a letter or character, a source of illumination on one side of said plate, and a plurality of reflectors on said plate and inclined to reflect the light rays coming through said openings upon the portion of the plate surface included within said outline.

3. An electric sign having illuminating lamps contained therein and one side or face thereof provided with a slot forming approximately the outline of a letter, and a reflecting flange extending upwardly from the outer edge of the slot, said flange being inclined whereby to reflect the light onto the metal forming the letter contained within the slotted outline, substantially as described.

4. An electric sign having illuminating lamps contained therein and one side or face thereof provided with a slot forming approximately the outline of a letter, the metal of said letter being held in place by cross pieces formed integral with said plate and letter, and a reflecting flange extending upwardly at an incline from the outer edge of the slot, whereby to reflect the light onto the metal forming the letter and contained within the slotted outline, substantially as described.

In testimony whereof I have affixed my signature in presence of two witnesses.

THOMAS E. MURRAY.

Witnesses:

GERTRUDE T. PORTER.

MAY T. MCGARRY.

Defendants' Exhibit "D."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "D." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

1,085,530.

Patented Jan. 27, 1914.

2 SHEETS—SHEET 1.

Fig-1-

Fig-2-

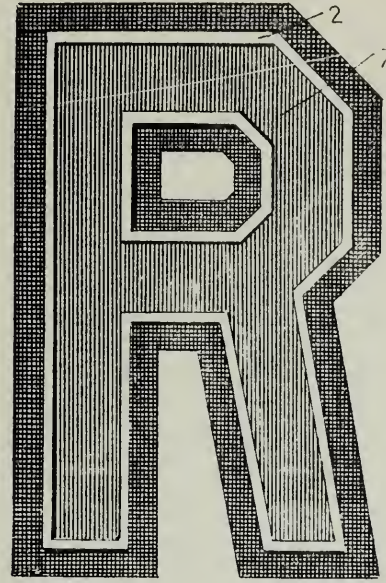
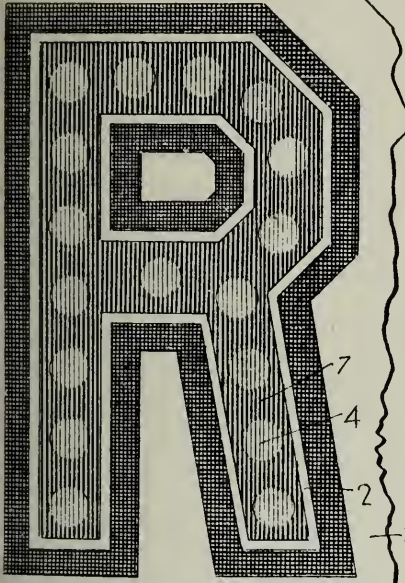
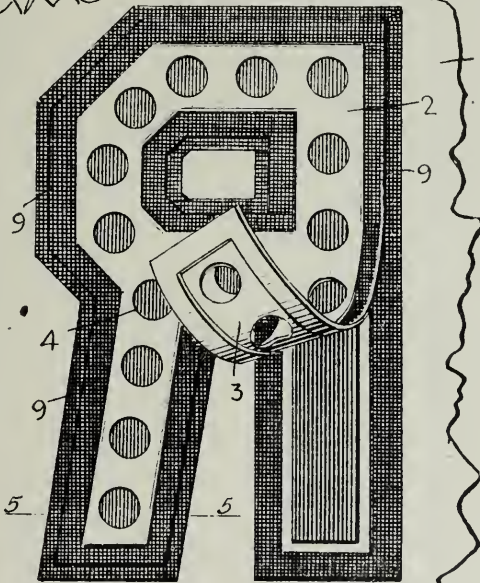


Fig-3-



WITNESSES

Frank C. Palmer.
L. Kitchin.

INVENTOR

Walter H. Beck
BY Munroe

1,085,530.

Patented Jan. 27, 1914

2 SHEETS—SHEET 2.

Fig-4-

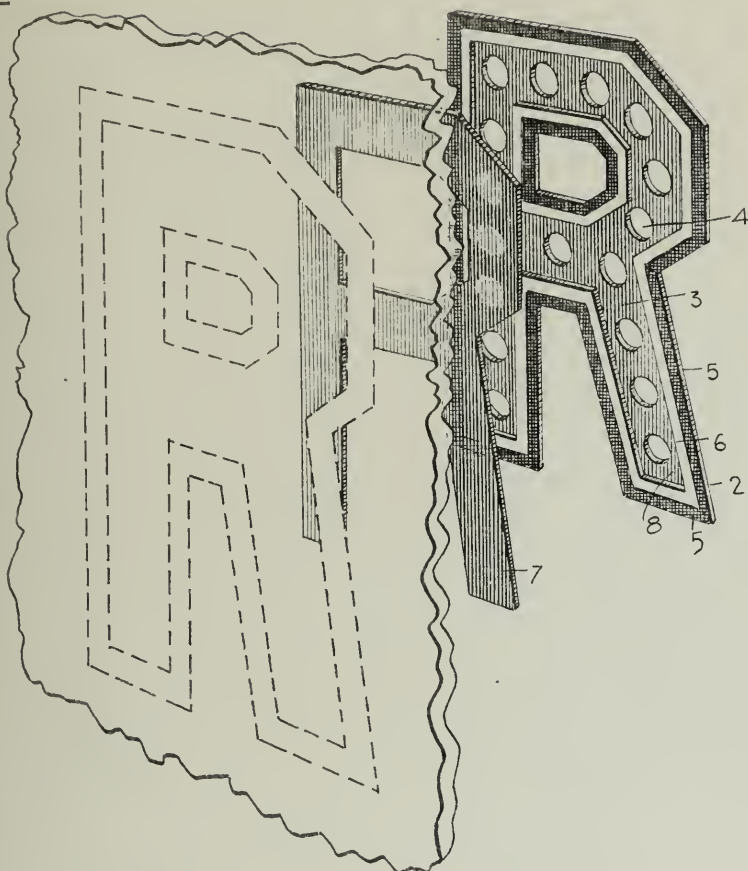
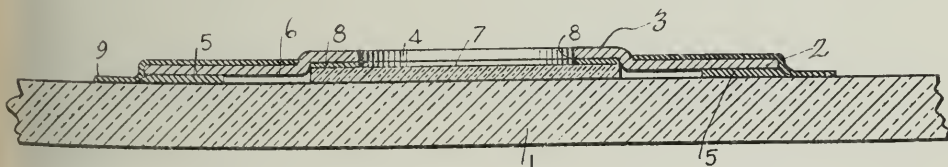


Fig-5-



WITNESSES

Frank C. Palmer

A. L. Kitchen

INVENTOR

Walter H. Bock

BY Munn & Co.

UNITED STATES PATENT OFFICE.

WALTER H. BOCK, OF NEW YORK, N. Y., ASSIGNOR OF ONE THIRD TO VICTOR BOCK, OF NEW YORK, N. Y.

LETTER.

1,085,530.

Specification of Letters Patent.

Patented Jan. 27, 1914.

Application filed March 10, 1913. Serial No. 753,192.

To all whom it may concern:

Be it known that I, WALTER H. BOCK, a citizen of the United States, and a resident of the city of New York, County of Queens, in the county of Queens and State of New York, have invented a new and Improved Letter, of which the following is a full, clear, and exact description.

This invention relates to improvements in signs, and particularly to signs or letters having translucent portions, and has for an object to provide an improved structure which is adapted to be clearly seen either day or night.

Another object in view is to provide an improved letter with an apertured base or background structure arranged in the form of a letter or configuration designed to be presented, and a translucent covering for the apertured portion of the design and conforming to the arrangement of the apertures so that during the day the translucent covering will be seen, and during the night the outline of apertures, a lamp or suitable light to be placed in back thereof.

A still further object of the invention is to provide a letter or sign structure formed with an outline of translucent material but colored to a certain extent so as to hide from view anything placed in back thereof when viewed from a distance, and a background or base placed back of the translucent portion of the letter or configuration formed with apertures conforming to the desired letter, whereby the letter or configuration may be seen during the day, and may be seen during the night after a light has been placed in back thereof.

In carrying out the objects of the invention, the letter is adapted to be placed upon a transparent support, as for instance a glass window, and secured by any desired means, as for instance a suitable adhesive. In forming the letter a base is provided of the shape of letter desired and pressed until there is a depressed portion forming the letter. Arranged in this depressed portion are a plurality of apertures following the depression so that when a light is placed in back thereof the same will shine through the apertures and give the correct outline of the letter. A translucent substance, as for instance colored celluloid, is placed in the depressed portion and then the entire

letter, including the celluloid filling, is secured to the glass support by an adhesive. In order to properly finish the letter a border is painted around the letter of a different color from the base or the celluloid filling.

A practical embodiment of the invention is represented in the accompanying drawings forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the views.

Figure 1 is a front view of a letter as the same appears at night; Fig. 2 is a view similar to Fig. 1 except that the same shows the letter as it appears during the day; Fig. 3 is a rear view of the letter shown in Figs. 1 and 2, part of the base being raised for better illustrating the construction; Fig. 4 is a perspective view showing the glass support and parts of the letter separated; and Fig. 5 is a section through Fig. 3 approximately on the line 5-5, the same being shown on an enlarged scale.

Referring to the accompanying drawings by numerals, 1 indicates a glass support of any kind, as for instance the glass in show windows. Connected to glass 1 is a base 2 formed of any desired material, as for instance metal of a shape of the letter desired. It will be understood that other configurations besides letters could be formed without departing from the spirit of the invention, and that the expression letter will include such other configurations. The base 2 is provided with a depression or pressed out portion 3 which conforms to the shape of the letter and in which is arranged a plurality of apertures 4 so that when a light is placed in back of the base 2 the outline of the letter will be seen through apertures 4. The base 2 may be formed from some bright material, as for instance tin-foil, gold, or other metal. When formed in this manner, an adhesive layer 5 is placed around the edge whereby means are provided for securing the base 2 to the glass 1, and also a border 6 is provided which clearly shows up in Figs. 1, 2, and 4. In applying the adhesive 5, the same is preferably colored so as to form a contrast with the border 6 and also with the translucent form 7. The form 7 may be colored to any desired extent provided the same is not made opaque. The form 7 is adapted to

387
fit into the depression 3, and in order to hold the same properly in place, an adhesive layer 8 is applied to the depression 3. This adhesive layer is formed of substantially the same color as the coloring matter in the form 7, so that the color of the translucent form 7 is deepened in order to give the form an opaque appearance, or if the form 7 is perfectly clear, the coloring matter will act as a background therefor, though ordinarily the form 7 is provided with a sufficient color to prevent an observer from seeing the apertures 4 during the day in order that the letter will appear as a clear plain letter as disclosed in Fig. 2. After the form 7 and base 2 have been assembled, they are applied to the glass 1 and then a border 9 of any suitable paint is applied so as to set out more clearly the letter. Also the border 9 is adapted to hide any irregularities in the periphery of the base 2, as the border can be made perfectly straight notwithstanding irregularities of the form. It will be noted that the adhesive 5 and the border 9 are of the same color so as to form a continuous border line as shown in Figs. 1 and 2.

Having thus described my invention I

claim as new and desire to secure by Letters Patent:—

A letter of the character described consisting of a metal base forming the outline of a letter, said base having a depressed portion conforming to the letter and a radiating flange all around the depressed portion, said depressed portion being provided with a plurality of apertures, a translucent form mounted in said depressed portion and substantially filling the same, a coloring matter arranged in said depressed portion between said form and said metallic base, said coloring matter being substantially of the same color as the translucent form, whereby the color of the translucent form is deepened in order to give the same an opaque appearance, and a layer of adhesive matter arranged around the radiating flange on said base for securing the base to a support.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

WALTER H. BOCK.

Witnesses:

MARY R. TUOHY,
MARGARET DE S. COPPELL.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Fig. 1.

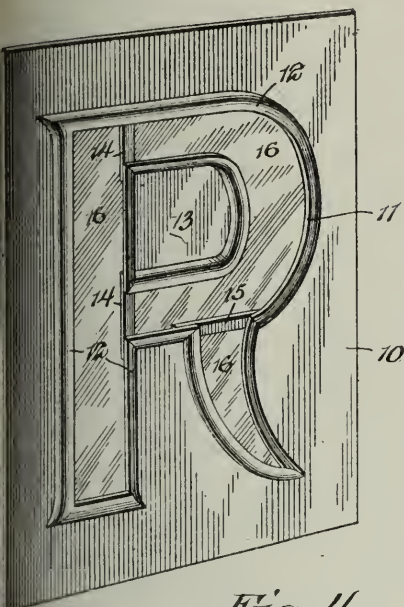


Fig. 2.

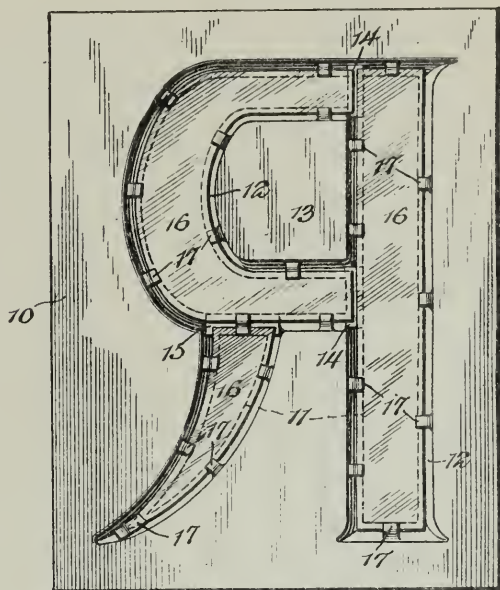


Fig. 4.

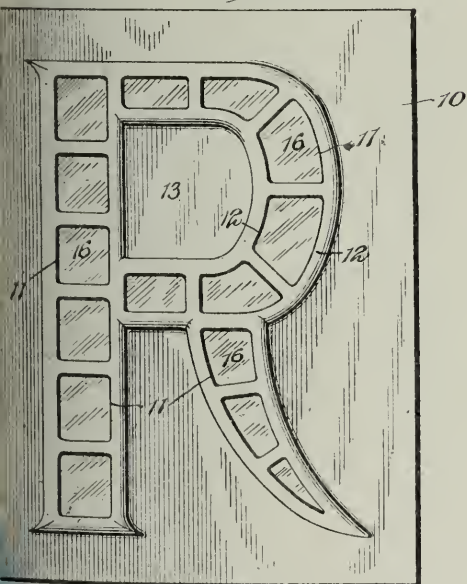


Fig. 3.

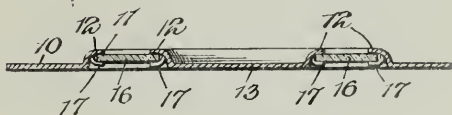


Fig. 5.



REFLECTIVE COATING.

Lambert A. J. Muller-Thym,
Inventor,

Witnesses
Howard W. Orr.
B. J. Foster.

By *E. J. Siggers*
Attorney

UNITED STATES PATENT OFFICE.

LAMBERT ANTON JOSEPH MULLER-THYM, OF NEW YORK, N. Y.

SIGN.

SPECIFICATION forming part of Letters Patent No. 716,078, dated December 16, 1902.

Application filed July 23, 1902. Serial No. 116,710. (No model.)

To all whom it may concern:

Be it known that I, LAMBERT ANTON JOSEPH MULLER-THYM, a subject of the Queen of the Netherlands, residing at New York, in the county of New York and State of New York, have invented a new and useful Sign, of which the following is a specification.

This invention relates to signs, and more particularly to that class which can be used in the day-time and illuminated at night.

The object of the invention is to provide a structure that is easily manufactured, and therefore comparatively inexpensive, at the same time being strong and durable and not affected to any material extent by the elements.

The preferred embodiment of the invention is fully illustrated in the accompanying drawings and described in the following specification.

In said drawings, Figure 1 is a perspective view of the front or exposed face of the improved structure. Fig. 2 is a view in elevation of the rear face. Fig. 3 is a sectional view through the same. Fig. 4 is a view in elevation of a slightly-modified form. Fig. 5 is a detail view to show the reflecting coating.

Similar numerals of reference designate corresponding parts in all the figures of the drawings.

In this embodiment of the invention a face-plate 10 is employed, which is formed of sheet metal, intermediate portions of said plate being stamped or struck in from one side and projecting from the opposite side, forming a suitable character, in this instance shown as the letter "R." The central portion of this stamped letter is cut out, as shown at 11, to form an opening through the face-plate, said opening conforming to the shape of the letter and being of less width than the stamped portion, as clearly illustrated in Figs. 1, 2, and 3. As a result oppositely-disposed overhanging flanges 12 are formed around the edges of said opening. The intermediate portion 13 of the plate, which is completely surrounded by the opening, is held in place by suitable strips 14, which extend from said intermediate portion across the opening, as shown. Other brace-strips, as 15, may also be employed. Transparent material 16, pre-

erably glass, is cut to the form of the stamped letter or character and is fitted within the rear portion of the same, as shown in Fig. 2. This material is wider than the opening and engages the flanges 12. It is held in place by suitable fastening-tongues 17, that are secured within the stamped portion and extend over the edges of said material, terminating at the opening, as clearly shown in the drawings. In practice the inner face of the sheet is coated with suitable reflecting material, and the flanges are also coated, this coating of the flanges reflecting the light inwardly and serving to make the edges of the transparent letter brighter than the central portions, and as a consequence said letter presents a more pleasing appearance. In Fig. 4 the construction is substantially the same, with the exception that a plurality of spaced openings are formed in the stamped portion instead of a continuous opening, as is illustrated in the first three figures. In practice these letters may each be formed on a separate plate and afterward secured together to form the sign, a sign so constructed forming, of course, the front face of a suitable casing, within which the lights are housed, or a plurality of letters constructed by a special die may be formed in a single sheet.

There are many advantages for this structure. In the first place, with the exception of the transparent material, it is constructed entirely of metal, and is therefore not affected to any great extent by the elements. By stamping the letters or other characters from the plate said letters or characters are raised, which is a very desirable feature in signs, and, furthermore, the outstanding flanges serve to strengthen the sheet and prevent its being bent. The glass is entirely housed within the shaped portion, so that the inner face of the sheet is smooth, and, furthermore, the glass is protected by the surrounding flanges.

From the foregoing it is thought that the construction, operation, and many advantages of the herein-described invention will be apparent to those skilled in the art without further description, and it will be understood that various changes in the size, shape, proportion, and minor details of construction may be resorted to without departing from

the spirit or sacrificing any of the advantages of the invention.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. In a sign, a face-plate having a portion stamped from the same and projecting from one face, said portion being provided with openings forming a design or character, transparent material fitted in the stamped portion and covering the openings, and tongues secured to the face-plate and engaging the transparent material to hold the latter in place.

2. In a sign, a sheet-metal plate having a portion stamped in outline from the body thereof and being provided with an opening, said stamped portion projecting from one side of the plate, leaving a corresponding recess in the opposite side, the raised character or design providing outstanding flanges which serve to strengthen the plate while the recess forms a receptacle or pocket, in combination with transparent material arranged in said receptacle or pocket and covering the opening, and fastening means secured to the face-plate and engaging the transparent material to hold the latter in place, said fastening means terminating at the opening, so as to be invisible from the outer side of the plate.

3. In a sign, a face-plate having a design or character stamped from the same and projecting from one face, said design or character being provided with an opening that conforms to the shape of the same, the width of

the opening being less than the width of the design or character, whereby keeper-flanges are formed on opposite sides of the same, transparent material fitted between the flanges and extending across the opening, and fastening-tongues arranged in the stamped portions of the plate and engaging over the edges of the transparent material.

4. In a sign, a face-plate having an opening therethrough and outstanding flanges arranged on opposite sides thereof, transparent material arranged over the opening and held in place against the flanges, and a reflective coating arranged upon the inner faces of the flanges.

5. In a sign, a plate having a character or design stamped in outline from the body thereof, said stamped portion being provided with an opening, the stamped portion projecting from one side of the plate and leaving a corresponding recess at the opposite side, the raised character or design providing outstanding flanges which serve to strengthen the plate while the recess at the other side of the plate forms a receptacle or pocket, in combination with transparent material held in said receptacle or pocket so as to close the opening in the plate.

In testimony that I claim the foregoing as my own I have hereto affixed my signature in the presence of two witnesses.

LAMBERT ANTON JOSEPH MULLER-THYM.

Witnesses:

IRME DOLCE,

CARL SCHNEIDER.

Defendants' Exhibit "E."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "E." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

[This Drawing is a reproduction of the Original on a reduced scale]

Fig. 1.

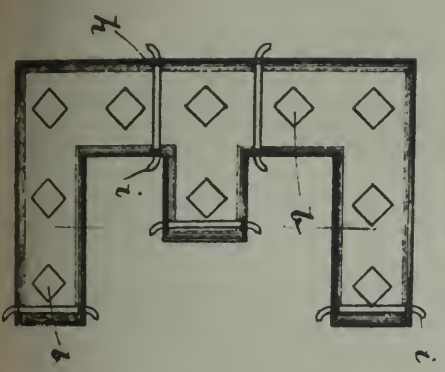
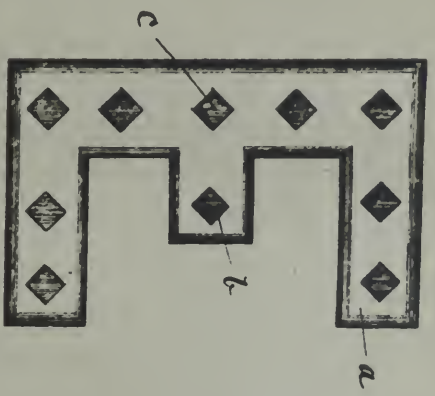
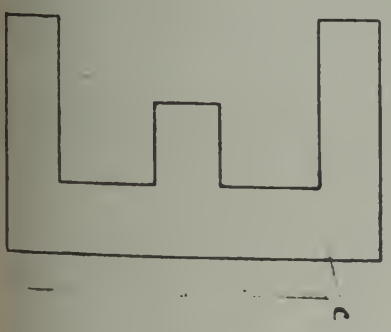
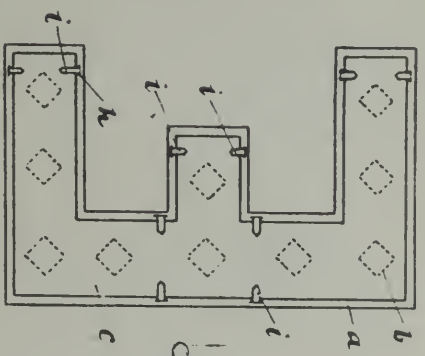


Fig. 2.





Date of Application, 16th June, 1900

Complete Specification Left, 15th Apr., 1901—Accepted, 25th May, 1901

PROVISIONAL SPECIFICATION.

Improvements in and connected with Letters and Signs for Advertising and other Purposes

We **ALFRED CHARLES AMY** and **HENRY BATTAMS** trading as **Garnier and Company** of 86 Farringdon Street in the City of London Enamelled Copper Letter Makers do hereby declare the nature of this invention to be as follows:—

The object of this invention is to construct letters for advertising and other purposes in such a manner that they may be visible at night as well as in the daytime. Now according to this invention we form the letters of metal and enamel them in the usual way but instead of the letters being plain we perforate them with a number of holes or slots of any suitable size and shape the said perforations following the contour of the letters

At the back of the letters we attach a strip or strips of transparent material such as celluloid mica or gelatine colored or otherwise so that when the letters are secured to a shop window or to any other transparent or translucent surface and any illuminant is placed behind them the light will shine through the celluloid mica gelatine or other material at the back of the perforations and render the sign or advertisement visible by artificial light as well as by daylight. The transparent material may be secured to the back of the letters by any suitable cement or the edges of the letters may have projections thereon which may be turned over to hold the said material in place.

Or the edges of the letters may be beaded or turned over the transparent material.

Or the letters may have slits formed in them before being enamelled and thin copper strips passed through the said slits the ends of the said strips after the letters are enamelled being turned over the transparent material to hold it in place

Advertising tablets and signs may be similarly formed by perforating the letters or design to be displayed and attaching a transparent substance to the back of the tablet or by attaching letters constructed as hereinbefore specified to a transparent backing or by attaching perforated letters to a colored transparent or translucent tablet

Dated this 16th day of June 1900

T. E. HALFORD

82 Mark Lane London E.C. Agent for Applicants.

COMPLETE SPECIFICATION.

Improvements in and connected with Letters and Signs for Advertising and other Purposes

We **ALFRED CHARLES AMY** and **HENRY BATTAMS** trading as **Garnier and Company** of 86 Farringdon Street in the City and County of London Enamelled Copper

appears as a letter formed of a series of colored diamond shaped dots at intervals thus enabling the advertisement name or other combination formed of letters constructed as specified to be read at night as well as in the daytime

5 The letters may be secured to windows and the like by means of white lead or a suitable cement in the usual way.

The perforations may be of any suitable size and shape.

When making advertising tablets and signs according to this invention the letters may be formed by cutting away the material of which the tablet or sign is composed to form the outline of the letters or design and attaching the transparent material to the back of the tablet by any of the means hereinbefore described or by forming the letters or design on the surface of the tablet in different colored enamels and perforating the tablet where necessary in a similar manner to that hereinbefore described for forming letters transparent material colored or otherwise being attached to the back of the tablet as specified so as to render the advertisement or sign visible both by day and night.

15 Or the advertisement or sign may be formed by attaching perforated enamelled or other opaque letters to a colored transparent tablet or the advertisement or sign may be formed by attaching letters constructed as hereinbefore specified and shewn by the drawings to a sheet of glass or other suitable transparent material

20 Having now particularly described and ascertained the nature of our said invention and in what manner the same is to be performed we declare that what we claim is:—

1 Letters for advertising and other purposes constructed of enamelled copper or other suitable opaque material having perforations therein following the contour of the letters and a suitable transparent material (preferably coloured) attached to the back thereof by any suitable means such as a suitable cement or by means of strips of thin metal passed through slits therein and turned down over the said transparent material all substantially as specified.

2 Advertising tablets and signs constructed of an opaque material having letters or designs or both perforated therein or perforated and displayed thereon with a transparent substance at the back thereof and secured thereto by any suitable means.

3 Advertising tablets and signs consisting of a transparent substance such as glass having letters or devices constructed as hereinbefore specified attached thereto for the purpose stated.

4 Letters signs and tablets constructed as hereinbefore specified and shewn by the accompanying drawings

Dated this 14th day of April 1901

T. E. HALFORD

82 Mark Lane London E C Agents for Applicant

Defendants' Exhibit "F."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court
Nor. Dist. Calif. Deft. Exhibit "F." Filed
12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Ap-
peals for the Ninth Circuit. Filed Jul. 11, 1922.
F. D. Monckton, Clerk.

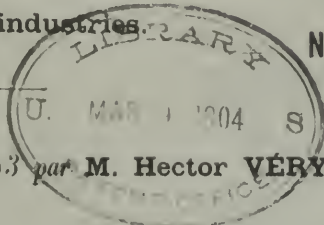
BREVET D'INVENTION

du 25 août 1903.

XX. — Articles de Paris et petites industries.

4. — INDUSTRIES DIVERSES.

N° 334.837



Brevet de quinze ans demandé le 25 août 1903 par **M. Hector VÉRY** résidant en France.

Nouvelle lettre lumineuse en relief.

Délivré le 5 novembre 1903; publié le 4 janvier 1904.

Dans la fabrication des lettres ou motifs mineurs en relief usités jusqu'ici, on a dû employer, dans la plupart des cas, des matières transparentes qui doivent être travaillées par des procédés spéciaux (soufflage ou moulage à chaud pour le verre et le cristal), procédés qui exigeaient un matériel très coûteux et ne pouvaient s'appliquer qu'à des pièces de dimensions restreintes.

La présente invention a pour objet un nouveau système de lettres et attributs en relief fabriqués en matière transparente ou transparente et pouvant être rendus lumineux par un mode quelconque d'éclairage : électricité, gaz, acétylène, pétrole, alcool, etc.

Ce système comporte un mode de montage spécial basé sur le fait que l'on emploie, pour obtenir la forme des lettres en relief, une ossature ou charpente métallique dont les contours dessinent les arêtes des lettres ou épousent les formes courbes qu'on veut leur donner suivant le style adopté, cette ossature étant disposée pour recevoir, par des modes de fixation ordinaires, les parois transparentes constituant la surface des lettres ou attributs, et qui seront composées, non pas d'une seule pièce, mais d'éléments séparés facilement assemblables dans l'ossature et permettant l'obtention de lettres et attributs de toutes dimensions.

Le dessin ci-joint représente, à titre d'exemple, ce nouveau mode de fabrication :

Figure 1 étant une vue en perspective de l'ossature d'une lettre simple;

Figure 2, une coupe transversale par A B d'une lettre suivant figure 1 et à plus grande échelle;

Les figures 3 à 6 montrent les modes de constitution de différentes lettres à l'aide d'éléments;

Les figures 7, 8 et 9 montrent, entre autres, trois types de caractères auxquels le principe est également applicable;

Les figures 10 à 15 montrent schématiquement en coupe différentes sections de caractères que l'on pourra adopter.

En se reportant aux figures 1 et 2, on voit que l'ossature *a* pourra être constituée de préférence en une seule pièce de métal fondu, et plus particulièrement de métaux fusibles facilement : zinc, plomb, étain, etc., ou aussi des alliages de ces métaux. Mais on pourra de même constituer cette ossature à l'aide de lames étirées au profil choisi et assemblées ensuite par soudure ou par vis, ou encore à l'aide de feuilles découpées, estampées ou sciées et pliées ensuite pour constituer une section convenable permettant la fixation facile des parties transparentes *b*. Cette fixation pourra être faite à l'aide de pattes *c* ou de toute autre façon.

En ce qui concerne la constitution des parties transparentes en éléments assemblables

2 dans les ossatures, on remarque que, d'après
la forme des différentes lettres, ces éléments
peuvent se réduire à 7 ou 8 types, dont 5
sont représentés en *d, e, f, g, h*, dans les lettres
5 que représentent les figures 3 à 6. Ces élé-
ments-types peuvent aussi servir à constituer
facilement les autres lettres de l'alphabet.

Il sera donc très économique, et spéciale-
ment pour les lettres et attributs de grandes
0 dimensions, de constituer des lettres quelcon-
ques et de styles quelconques, par assemblage
de ces éléments-types en combinaison avec les
ossatures déjà décrites en métal fondu, étiré
ou estampé; les figures 7, 8 et 9 montrent
5 par exemple trois styles de lettres qui pour-
raient être fabriqués par le même procédé,
comme décrit précédemment, lequel s'appli-
quera aussi, bien entendu, avec les modifica-
tions de détail nécessaires, à tous autres
10 styles et à toutes les sections désirées repré-
sentées à titre d'exemple aux figures 10 à 15 :
rectangulaire, triangulaire, demi-ronde, etc.

La nature de la matière des parois *b* des-
tinées à laisser passer la lumière pourra être
15 quelconque à condition d'être transparente ou
translucide, mais ce seront de préférence : le
verre, ou le cristal, clair, dépoli ou de cou-
leur, lisse, gravé ou à rayures, décoré d'émail,
d'or ou d'argent, ou de toutes combinaisons
20 d'ornementations quelconques, le celluloïd, le
papier imprégné, l'onyx, etc., et, en résumé,
toute matière naturelle ou fabriquée laissant
passer la lumière.

Les lettres ainsi constituées pourront être
35 montées soit sur une boîte séparée pour chacune

d'elles, et pouvant s'ouvrir pour rendre acces-
sible le foyer lumineux intérieur dont elle sera
en tous cas pourvue; soit sur un panneau
d'ensemble constituant alors un ou plusieurs
mots ou un motif composé, la boîte sur la-
4 quelle sera monté ledit panneau étant égale-
ment accessible pour le but sus-spécifié. Dans
ce dernier cas, l'éclairage intérieur sera réa-
lisé par un nombre quelconque de lampes ou
foyers lumineux.

De plus, qu'il s'agisse de lettres séparées
ou de panneaux d'ensemble, le fond de la
boîte pourra être remplacé par une deuxième
lettre ou une seconde inscription, de façon à
obtenir deux faces lumineuses.

Les côtés ou faces obliques de chaque lettre
pourront être transparentes ou non et orne-
mentées à volonté.

En résumé, je revendique une nouvelle
lettre lumineuse en relief, à foyer lumineux 5
intérieur, caractérisée en ce qu'elle est consti-
tuée par une ossature en métal fondu, laminé
ou estampé, en une ou plusieurs pièces soudées
ou assemblées, cette ossature dessinant les
arêtes ou contours de chaque lettre ou attribut, 6
et étant destinée à supporter les parties trans-
parentes en matière quelconque naturelle ou
fabriquée, constituées par des éléments-types
assemblés dans ladite ossature et fixés de façon
quelconque; le tout tel que décrit ci-dessus et 7
représenté, à titre d'exemple, au dessin an-
nexé.

HECTOR VÉRY.

Par procuration :

RIGOT et PRÉVOST.

Fig. 1



Fig. 2



Fig. 3



Fig. 4

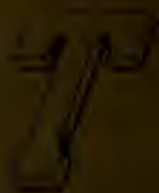


Fig. 5



Fig. 6



Fig. 7



Fig. 8

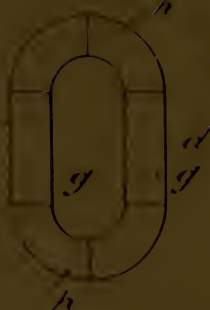


Fig. 9

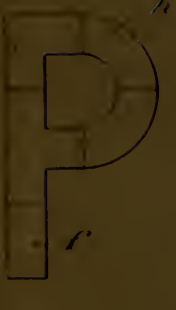


Fig. 10



Fig. 11



Fig. 12



Fig. 13



Fig. 14



Fig. 15



Defendants' Exhibit "G."

[Endorsed]: No. 507 & 577. U. S. Dist. Court,
Nor. Dist. Calif. Deft. Exhibit "G." Filed
2/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Ap-
peals for the Ninth Circuit. Filed Jul. 11, 1922.
F. D. Monckton, Clerk.

**Translation of French Patent No. 334,837, Dated
August 25, 1903, and Granted to Hector Very.**

FRENCH REPUBLIC.

**NATIONAL OFFICE OF INDUSTRIAL PROP-
ERTY,**

Patent of Invention of August 25, 1903.

XX—Paris Specialties and small industries.

4—Various Industries.

No. 334,837

Fifteen years Patents requested on August 25th,
1903, by M. HECTOR VERY, resident of
France.

New embossed letters.

Released November 5th, 1903; published January
4, 1904.

In the fabrication of letters or luminous embossed
designs now used, it has been customary to make
use of, in the majority of cases, transparent mate-
rials that must be worked by special processes (hot
blowing or molding for glass and crystal) processes
that require very expensive materials, and that
could only be applied to pieces of restricted dimen-
sions.

The present invention has for its object a new system of letters and characters in relief, made of transparent or translucent substance, that could be made luminous by means of illumination; electricity, gas, acetylene, petroleum, alcohol, etc.

This system requires a manner of setting (or mounting) specially deep depending upon the object for which it is to be employed, to obtain the form of letters in relief, on a skeleton or metallic frame, the contour of which designates the angles of the letters. Where the curved forms may be necessary, according to the style adopted, the skeleton is disposed to receive, by manner of ordinary fixation, the transparent walls constituting the surface of the letters or characters, and this is to be composed, not of only one piece, but of separate elements, easy to assemble in the framework and permitting the production of letters and characters of all dimensions. The design herewith is a correct example of the new manner of fabrication;

Figure 1 is a perspective view of the framework of one simple letter.

Figure 2 is a transverse section on A B of a letter next to figure 1 and has the shape of a raised letter.

The figures 3 to 6 show the manner of the formation of the different letters with the aid of the elements:

The figures 7, 8 and 9 show, among others, three types of letters, and as to these the same principle is equally applicable.

Figures 10 to 15 show a sketch of a different form of cutting sections of characters that could be adopted.

Referring again to figures 1 and 2 we see that the framework A could be constructed, preferably, of only one piece of melted metal, and particularly of fusible metals; zinc, lead, tin, etc., and also of the alloys of these metals. The framework could also be made with the aid of plates stretched in profile selected and assembled afterwards by welding or by screws, or with the aid of sheets cut-out, stamped or sawed and folded after to constitute one section suitable to allow the transparent parts B to be easily fixed thereto. The parts B may be secured with the aid of clamps, hooks C, or in any other way.

Concerning the constitution of the transparent parts is assembling elements within the framework, we remark that according to the form of the different letters, these elements could be reduced to 7 or 8 types, of which 5 are represented on d, e, f, g, h, within the letters that are represented by Figures 3 to 6. These element-types, may also serve to easily produce the other letters of the alphabet. It will be therefore very economic, and specially for the letters and characters of large dimensions, to produce whatever letters and of whatever styles, by assembling those element-types in combination with the framework, before described, in melted metal, printed or engraved. The figures 7, 8 and 9 are examples showing three styles of letters that could be made by the same process, as previously described, that may also be applied, it will be understood with detailed necessary modifications, to all other styles and to all other desired sections, examples of which

are shown in Figures 10 to 15; rectangular, triangular, demi-round, etc.

The nature of the substance of the walls (sides) B intended to allow the light to pass can be any material on condition that it must be transparent or translucent, of preference; The glass or the crystal, clear, unpolished, or painted, smooth, engraved or with stripes, ornamented with enamel, gold or silver, or ornamented with all combinations; the celluloid, the impregnated paper, the onyx, etc., and, in résumé, all natural or manufactured substances through which light could be seen.

The letters constituted in this manner could take an upward direction, or mounted may it be by putting them in separated boxes for each and every one of them, and the boxes can have openings to render accessible the interior luminous light; the light in all cases must be seen; be it upon a panel of general effect, consisting of one or several words, or an ornamental design, the case upon which the said panel is mounted to be equally accessible for the purpose above specified.

In the last case, the interior illumination will be produced by any number of lamps or fire-grates luminous.

Again, having on hand separated letters or panels of general effect, the bottom of the case could be replaced by a second letter or other inscription, in such way that two luminous fronts may be obtained.

The sides or oblique faces of each letter could be transparent or not and ornamented at will.

After all, I claim a new luminous letter in relief, of internal luminous fire or light, characterized and the same to be constituted of a framework (skeleton) of melted metal, plated or printed (stamped) of one or several pieces, soldered or assembled, that framework (skeleton) showing prominently the angles or contours of each letter or character, and intended to support the transparent parts (parcels) of any substance, natural or fabricated, to constitute by the element-types assembled within said framework (skeleton) and fixed in any way whatever; and everything herein and above described and represented, by right of example, may be seen on the annexed drawing.

HECTOR VERY.

By Power of Attorney,
RIGOT and PREVOST.

[Endorsed]: No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Hotchener, Appellant, vs. Federal Electric Company et al., Appellees. Translation of French Patent No. 334,837, Dated August 25, 1903, and Granted to Hector Very. Filed Aug. 3, 1922. F. D. Monckton, Clerk.

Fig.1.

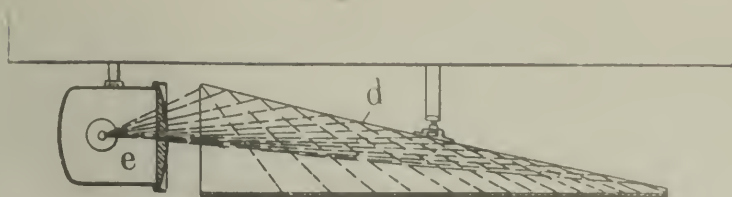


Fig.2.

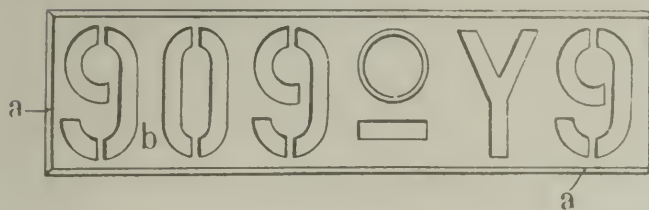


Fig.3.

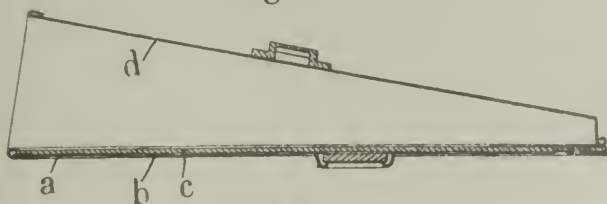


Fig.4.



Fig.5.

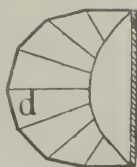


Fig.6.

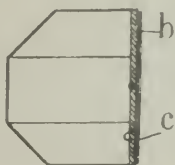
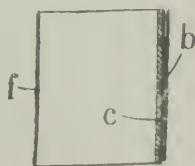


Fig.7.



Defendants' Exhibit "H"

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "H." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

Defendants' Exhibit "I"

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Specification and Drawing, in the matter of the

French Letters Patent to
BOLDES,

Dated September 17, 1903. Number 335,943.

Lettres pour enseignes.

Attached, hereto, is a translation, made by the Official Translator, of the Specification, in the matter of the same.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed in the District of Columbia this 17th day of March, in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the United States of America the one hundred and forty-fifth.

[Seal]

M. H. COULSTON,
Commissioner of Patents.

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "I." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

OFFICE NATIONAL DE LA PROPRIÉTÉ INDUSTRIELLE.

BREVET D'INVENTION

du 17 septembre 1903.

XX. — Articles de Paris et petites industries.

4. — INDUSTRIES DIVERSES.

N° 335.943

Brevet de quinze ans demandé le 17 septembre 1903 par M. Hugues BOLDÈS rési-
dant en Allemagne.

Lettres pour enseignes.

Délivré le 22 décembre 1903; publié le 20 février 1904.

La présente invention se rapporte à un nouveau dispositif de lettres pour enseignes, ces lettres pouvant être lumineuses ou non, être montées soit sur des panneaux complets, soit de façon à constituer des éléments par boîtes séparées, à simple, double ou triple face, ces éléments pouvant être aussi interchangeables, et le principe de ce mode d'établissement pouvant être également appliqué à la constitution de motifs, signes, attributs, etc.

Dans ce dispositif, les lettres ou signes sont simulés sur une plaque translucide ou transparente en verre, celluloïd, etc., sur laquelle, à la façon connue, les parties extérieures aux contours des lettres sont rendues opaques de façon quelconque, et les contours de chaque lettre ou signe sont accentués par l'application sur la face d'avant de la plaque translucide, d'une bordure, soit métallique, soit en bois ou matière quelconque, ornée ou décorée, entre les contours de laquelle sont réservés des espaces vides.

Les figures 1 et 2 du dessin ci-joint représentent à titre d'exemple deux formes de lettres établies d'après ce principe.

La figure 3 représente à titre d'exemple une boîte sur laquelle est montée une lettre, la figure 4 étant une coupe transversale de la figure 3, et la figure 5 montre en vue de face une boîte portant un motif complet.

En se reportant aux figures 1 et 2, on voit

que le dispositif comprend une plaque de verre ou autre matière translucide (a), avec bordure (b) limitant les contours de la lettre, constituée par une baguette soit métallique et émaillée, soit en bois ou autre matière, peinte ou décorée de façon quelconque, entre les contours de laquelle sont réservés des espaces transparents (c), tandis que le reste de la plaque est rendu opaque de toute façon convenable.

S'il s'agit de constituer des motifs non lumineux, les lettres ou signes qui les composeront seront figurés sur une ou plusieurs plaques de verre assemblées et montées sur un panneau de la façon ordinaire.

Pour former des motifs lumineux composés de lettres séparées, on utilisera pour chaque lettre par exemple des boîtes figures 3 et 4, comprenant un cadre en métal ou en bois (d) avec rebord intérieur (e) maintenant la plaque (a) qui porte la lettre, et fond (f) s'il s'agit d'une lettre à simple face. La plaque (a) pourra être maintenue en avant par un cadre (g) s'emboîtant sur le cadre (d) et portant des ressorts (h) qui font pression contre le verre pour le maintenir fixe pendant le transport. Le cadre (g) est maintenu sur une ou plusieurs faces soit par des crochets de fermeture (i) passant dans des encoches *ad hoc*, et pouvant être rabattus, soit de toute autre façon. On pourrait aussi faire en sorte que la plaque

la lettre fût assujettie au cadre de devant s'emboîtant alors dans la boîte elle-même pour éviter toute saillie extérieure. Dans un cas comme dans l'autre, l'interchangeabilité des lettres ou signes sera facile à obtenir sans avoir à toucher à la boîte elle-même, mais seulement à son couvercle.

Pour les lettres à double face, le fond (f) est supprimé et la deuxième face est disposée comme celle précédemment décrite.

En faisant des boîtes de dimensions convenables, on pourra disposer à côté l'une de l'autre plusieurs plaques (a) pour constituer un mot ou un motif, ou au besoin employer une seule plaque de verre qui recevra toutes

les lettres et portera un cadre de face qui sera retenu par un des moyens indiqués plus haut par exemple, figure 5. La source lumineuse sera en tous cas quelconque et disposée à l'intérieur de chaque boîte de toute façon connue.

EN RÉSUMÉ, je revendique un dispositif de lettres et motifs pour enseignes, lumineux ou non et interchangeables ou non, tel que décrit ci-dessus en principe et représenté à titre d'exemple au dessin annexé.

HUGUES BOLDÈS.

Par procuration :

RIGOT et PRÉVOST.



Fig. 1

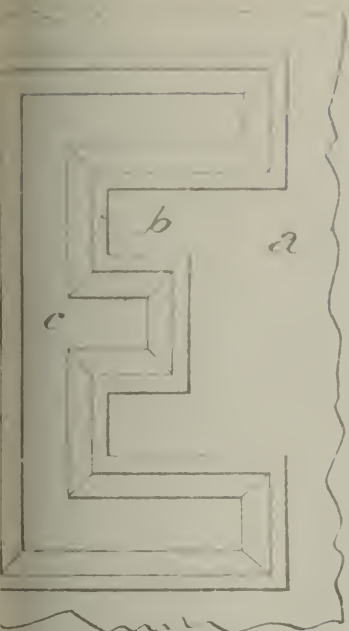


Fig. 2



Fig. 3.

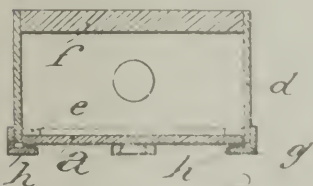
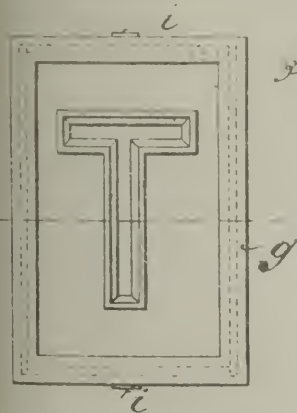


Fig. 4.

Fig. 5.



Translation of French Patent #335943, to Boldés.
Letters for Signs.

(Appl'd for Sep. 17, 1903, iss'd Dec. 22, 1903, publ'd
Feb. 20, 1904.)

The present invention refers to a new arrangement of letters for signs. Such letters may be luminous or not, may be mounted together on glass panes, or so as to constitute elements with separate boxes, one, two or three-faced. These elements may be interchangeable, too, and the principle of this mode of construction is also applicable to design elements, signs, symbols, &c.

In the present arrangement, the letters or signs are reproduced on a translucent or transparent plate of glass, celluloid, &c., on which the portions without the outlines of the letters are, in known manner, made opaque in any way, and the outlines of any letter or sign are emphasized by applying, on the front face of the translucent plate, a border of metal, wood or any material, ornamented or decorated, between the outlines of which empty spaces are left.

Fig. 1, 2 of the accompanying drawing represent, by way of example, two forms of letters designed in accordance with this principle. Fig. 3 represents, by way of example, a box with a letter mounted on it; fig. 4 being a cross-section of fig. 3. Fig. 5 is a front view of a box with a complete legend.

It is seen, by reference to fig. 1, 2, that the arrangement comprises a plate of glass or other trans-

lucent material *a* with a border *b* bounding the outlines of the letters and consisting of a strip either of metal and enameled, or of wood or other material painted or decorated in any way, between the outlines of which there are left transparent spaces *c*, while the remainder of the plate is made opaque in any suitable way. If non-luminous mottos are to be designed, their constituent letters or signs are reproduced on one or more assembled glass plates and mounted on a pane in the usual way. To assemble luminous mottos consisting of separate letters, for each letter a box, e. g. like fig. 3, 4, will Fr. Pat. 335943

be used, comprising a metal or wooden frame *d* with inner flange *e* to hold the letter-bearing plate *a*, and a back for an one-faced letter. At the front, the plate *a* may be held by a frame *g* fitting about the frame *d* and carrying springs *h* to press against the glass and hold it in position during transportation. Frame *g* is held on one or more sides by hook closures engaging special notches and capable of being thrown open; or in any other way. The plate with the letter, too, might be held in the front frame and be set in the box itself, to avoid protruding on the outside. In either case, the possibility of exchanging letters or signs without having to touch the box but only its cover, is easily obtained.

For two-face letters, the back *f* is omitted and the second face designed as that described above. By making the boxes of *a* suitable dimensions, several plates *a* may be set side by side to make up a word or legend, or if necessary, a single glass

plate may be used to hold all the letters, and will have a front frame held by the means above described, e. g. in fig. 5. The source of light may be of any kind in all these cases, and will be placed within each box in any known manner.

In sum, I claim an arrangement of letters and designs for signs, luminous or otherwise, interchangeable or otherwise, such as hereinbefore described in principle and represented in the accompanying drawing, by way of example.

Fr-E/tr:PW.

Mar. 16, 1921.

9120.

Defendants' Exhibit "J."

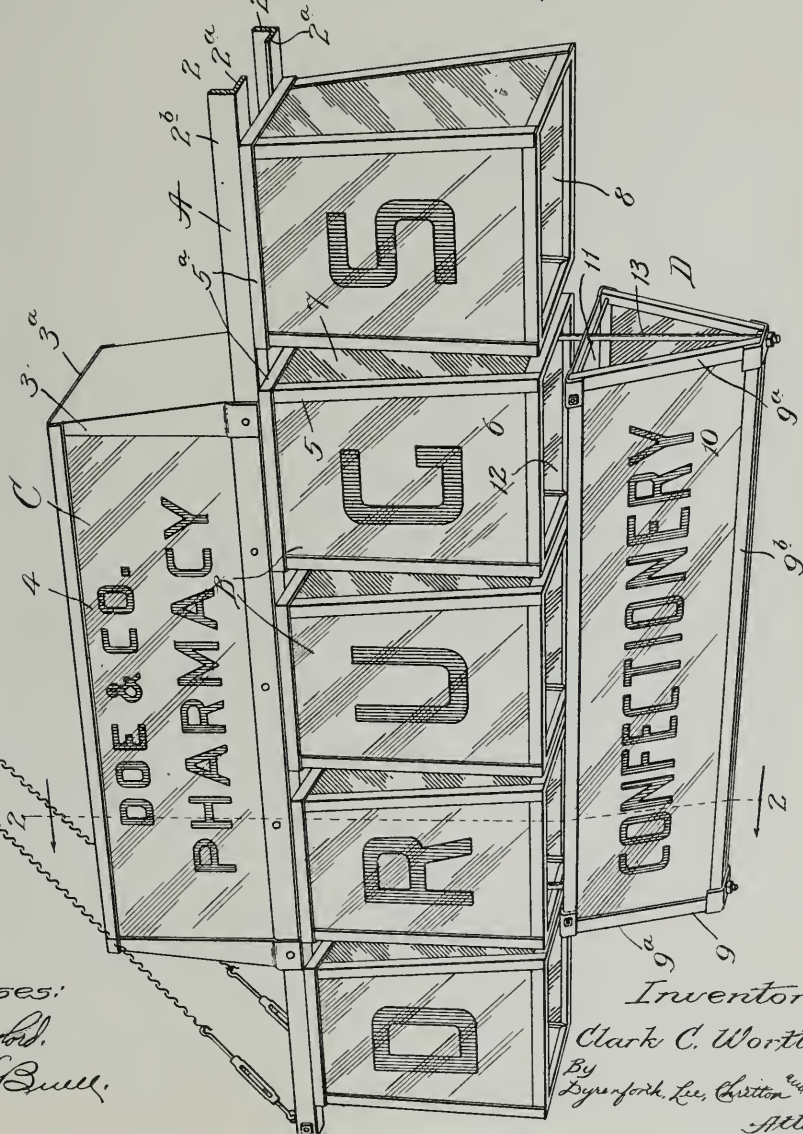
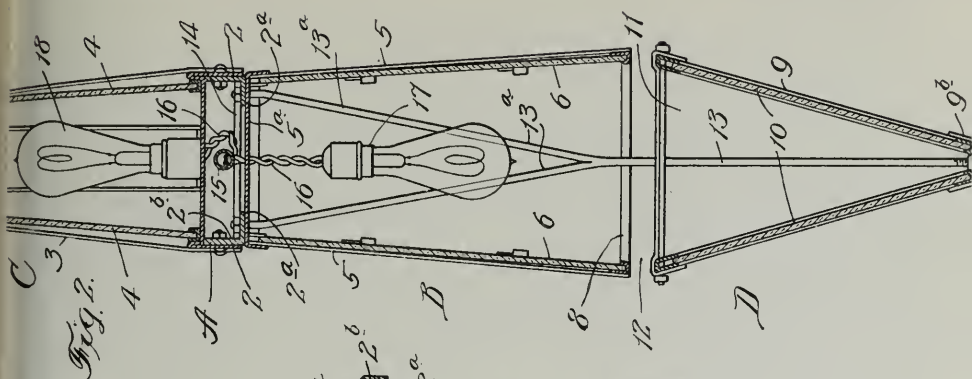
[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "J." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

1,128,741.

Patented Feb. 16, 1915.

2 SHEETS—SHEET 1.



Witnesses:

Chas. H. Bull.

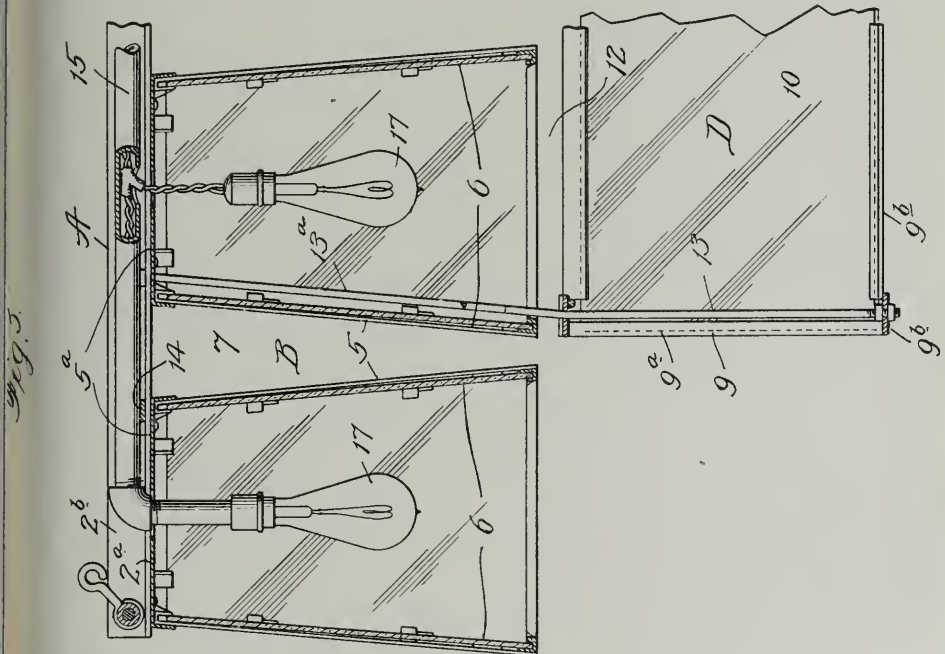
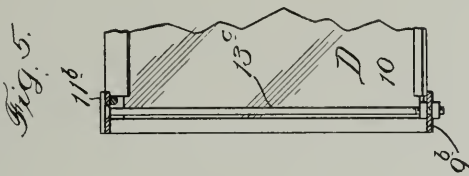
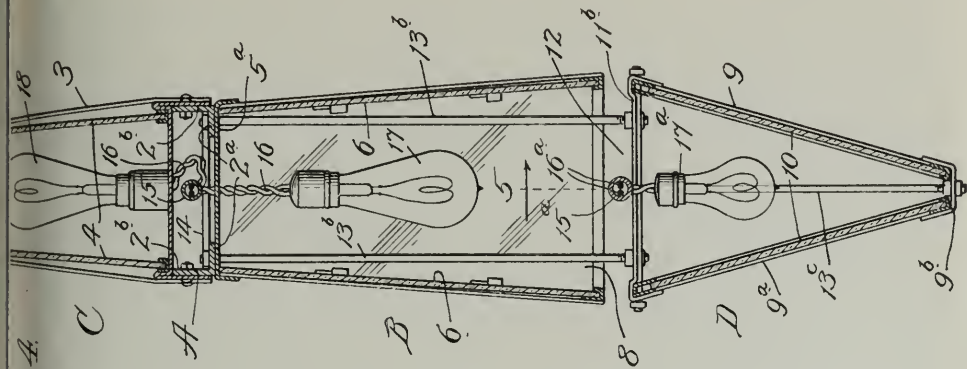
Inventor:

Clark C. Wortley,
By
Dyrenfork, Lee, Christen^{and} Wilson,
Attys.

,128,741.

Patented Feb. 16, 1915.

2 SHEETS—SHEET 2.



Witnesses:

E. C. Gaylord.
Chas. H. Buell.

Inventor:

Clark C. Wortley,

By Dyrenforth, Lee, Chilton and Wiley,
Attys. at L.

UNITED STATES PATENT OFFICE.

CLARK C. WORTLEY, OF CHICAGO, ILLINOIS.

SIGN.

1,128,741.

Specification of Letters Patent.

Potented Feb. 16, 1915.

Application filed May 12, 1913. Serial No. 777,212.

To all whom it may concern:

Be it known that I, CLARK C. WORTLEY, a citizen of the United States, residing at 175 Dearborn street, Chicago, in the county of Cook and State of Illinois, have invented new and useful Improvements in Signs, of which the following is a specification.

This invention relates particularly to signs adapted for street purposes and provided with illuminating means; and the primary object of the invention is to provide an improved arrangement of construction, possessing certain advantages of use and presenting a pleasing appearance.

The invention is illustrated in the preferred embodiment in the accompanying drawings, in which—

Figure 1 represents a broken perspective view of a sign constructed in accordance with my invention; Fig. 2, a broken vertical section taken as indicated at line 2 of Fig. 1; Fig. 3, a broken longitudinal section; Fig. 4, a sectional view similar to Fig. 2 showing a modification of the construction; and Fig. 5, a broken vertical section taken as indicated at line 5 of Fig. 4.

Referring to Figs. 1 to 3 inclusive, the construction comprises a horizontally disposed frame A, which may be connected with a building in any suitable manner and also supported by chains 1; a series of illuminable sign-sections, or panel-equipped devices B depending from the frame A; an illuminable sign-section, or panel-equipped illuminable device C surmounting the frame A; and an illuminable sign-section, or panel-equipped illuminable device D suspended beneath the devices B.

The frame A may be of any suitable construction. It preferably comprises horizontally disposed angle-bars 2 constituting the foundation framework for the whole structure. The angle-bars 2 have returned flanges 2^a and upturned flanges 2^b.

The device C comprises a frame 3 connected with the vertical flanges 2^b and including a top member 3^a. The device C is equipped with transparent panels 4 which may be made removable in any desired manner.

Illuminable devices B are designed to afford individual panels for letters. Each device B comprises a frame 5 equipped with transparent panels 6 which are made removable in any preferred manner. The devices B are horizontally aligned and are sep-

arated by spaces 7. Said devices B are open at their bottoms, as indicated at 8. The devices B also have their panels slightly convergent upwardly.

The device D comprises an open frame 9 having downwardly convergent sides fitted with transparent panels 10 which may be made removable in any desired manner. The frame 9 includes substantially triangular end-frames 9^a and connecting member 9^b. The frames 5 of the devices B have top members 5^a which are securely joined to horizontal flanges of the angle-bars 2. The horizontally elongated device D preferably has its upper side open as indicated at 11 and disposed just below the intermediate ones of the devices B, being separated therefrom by a space 12. The device D is supported by rods 13, whose lower ends are connected with the frame-member at the bottom of the device D, while their upper ends divide into branches 13^a which are connected with the horizontal flanges of the angle-bars 2.

The horizontal flanges 2^a of the angle-bars 2 are connected at intervals by cross-bars 14 which serve to support a horizontally disposed conduit 15 which carries electric conductors 16. The conductors 16 serve to supply current to the lamps 17 located in the device B and the lamp or lamps 18 located in the device C.

It will be noted that by reason of the upward divergence of the panels 10 of the device D and the disposition of the device D with relation to the devices B, light will be supplied from the lamps 17 for the device D; also the devices B serve to shield the device D from rain to a considerable extent; also, the arrangement is such that in the daytime light will be admitted freely to the interior of the devices B and D. It will also be noted that the device D being open at its top the light from the lamps 17 in the devices B will illuminate the diverging panels of the device D, thus effecting a maximum illuminated sign surface with the minimum of illuminating cost. A further advantage resulting from the device D being constructed with an open top and open ends and suspended in spaced relation to the devices B is that the skeleton-like frame thus produced offers diminished surface to wind pressure, thus rendering the structure less liable to damage therefrom.

The panels of the several illuminable de-

vices may be lettered or provided with suitable designs, as, for illustration, in the manner shown in Fig. 1.

The construction shown in Figs. 4, and 5 is similar to the construction already described, and the corresponding parts are similarly designated. The construction is modified to the extent of providing a conduit 15^a above the central portion of the device D and serving to contain conductors 16^a which supply a lamp or lamps 17^a disposed in the device D. In this construction, the frame of the device D is suspended by vertically disposed bolts 13^b, while the cross-members 11^b at the top of the frame of the device D are of such substantial construction as to afford an adequate support for the conduit 15^a and the body of the device D. The frame of the device D is further reinforced in this construction by employing vertical rods 13^c which connect the upper and lower frame-members of said device, as will be better understood from Fig. 5.

The construction described is cheap, durable, presents a pleasing appearance, and is economical in maintenance.

The foregoing detailed description has been given for clearness of understanding only, and no unnecessary limitations should be understood therefrom, but the appended claims should be construed as broadly as permissible, in view of the prior art.

What I claim as new and desire to secure by Letters Patent is—

1. In a sign, the combination of a substantially horizontal frame, a series of alined chambers depending therefrom and having transparent panels, illuminating means in said chambers, a horizontally elongated

frame open at its top and ends suspended beneath said claim, is in alinement therewith and in spaced relation thereto, and transparent panels carried by said elongated frame forming an elongated chamber, whereby said lower panels are illuminated by the illuminating means in said upper chamber.

2. In a sign, the combination of a substantially horizontal frame, a series of alined chambers depending therefrom and having upwardly converging transparent panels and open lower ends, illuminating means in said chambers, and a horizontal elongated frame suspended beneath said chambers in alinement therewith and in spaced relation thereto, and having upwardly diverging transparent panels, forming an elongated chamber open at its top, whereby said lower panels are illuminated by the illuminating means in said upper chambers.

3. In a sign, the combination of a horizontal frame, a series of alined chambers suspended therefrom open at their bottoms and equipped with transparent panels, illuminating means in said chambers, an elongated device beneath said chambers in alinement therewith and in spaced relation thereto, comprising an elongated frame and transparent upwardly divergent panels forming a chamber open at its top, and rods connecting said upper and lower frames, whereby the panels of said lower device are illuminated by the illuminating means in said upper chambers.

CLARK C. WORTLEY.

Witnesses:

L. HEISLAR,
E. D. TEULE.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Defendants' Exhibit "K."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "K." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

Fig. 1.

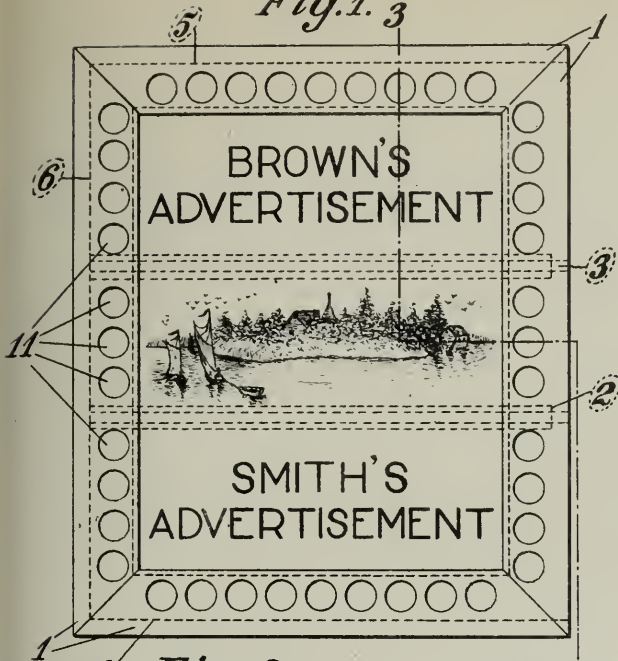


Fig. 3.

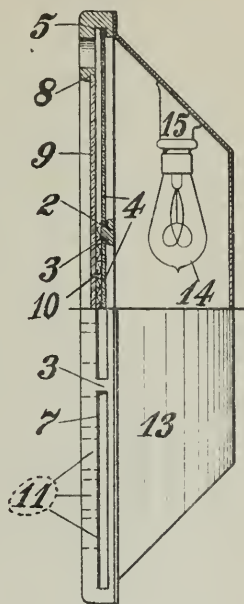


Fig. 2.

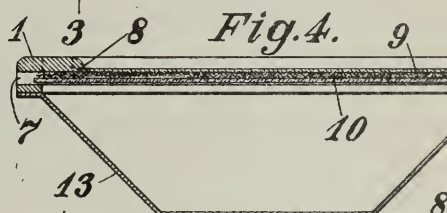
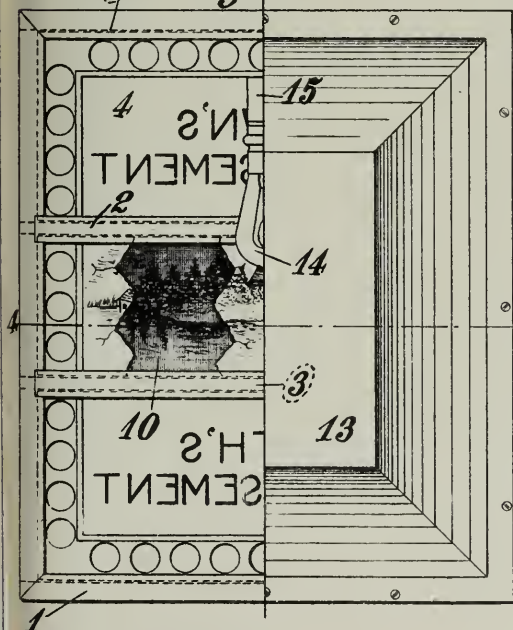
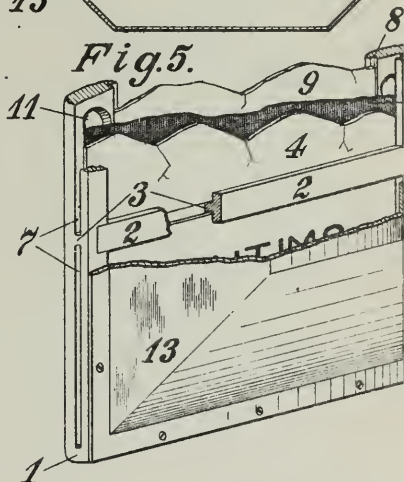


Fig. 5.



Witnesses:
 Gladys Walton.
 Geo. J. Anderson.

Inventor:
 George L. Thorn
 By Hugh N. Wagner
 Attorney

UNITED STATES PATENT OFFICE.

GEORGE L. THORNE OF ST. LOUIS, MISSOURI ASSIGNOR OF ONE-HALF TO
M. J. POPE AND ONE-HALF TO FRANK D. THORNE, OF ST. LOUIS,
MISSOURI.

ADVERTISING DEVICE.

No. 854,779.

Specification of Letters Patent.

Patented May 28, 1907.

Application filed January 25, 1906. Serial No. 297,872.

To all whom it may concern:

Be it known that I, GEORGE L. THORNE, a citizen of the United States, residing at the city of St. Louis and State of Missouri, have
5 invented certain new and useful Improvements in Advertising Devices, of which the following is a specification, reference being had therein to the accompanying drawing.

This invention relates to advertising devices, especially to that kind in which rays of light are caused to shine through transparent or translucent material or through openings in opaque material on which the advertisement is displayed, and relates particularly to
10 the manner of arrangement of the frame and slides bearing the advertisements, etc.

In the accompanying drawings forming part of this specification, in which like numbers of reference denote like parts wherever
15 they occur throughout the several views, Figure 1 is a front view of the device, Fig. 2 is a rear view, part of the reflector being removed, leaving the advertising and pictorial matter exposed; Fig. 3 is a side elevation
20 partly in section on the line 3—3, Fig. 1. Fig. 4 is a transverse sectional view on the line 4—4, Fig. 2. Fig. 5 is a fragmentary perspective view of the rear of the device, partly broken away.

The various parts are mounted in connection with a frame consisting of upright and horizontal panels 1. Extending transversely across the rear of the frame and mounted in the vertical panels are cross-pieces 2 which are
25 provided with ribs 3 on which the panes of glass 4 can slide. The top and bottom panels 1 have grooves 5 therein, also adapted to hold the panes 4. One of the vertical panels is provided with grooves 6 in which the ends
30 of the panes 4 can fit, while the opposite panel is slotted at 7. Each pane 4 is inserted through a slot 7, each of said slots being rendered independent of its neighbor by the intervention of rib 3, and rests in the groove 5
35 of the lower cross-panel, or on ribs 3 of the cross-pieces 2, or fits into the groove 5 in the upper cross-panel, and each one extends into its appropriate groove 6, so that each pane 4 is held snugly in place, but can be removed
40 easily by withdrawal through its slot 7. In the drawings I have shown two cross-pieces 2 which would divide the frame into three portions and allow the use of three panes of glass 4, but it is obvious that any desired number of

cross-pieces can be used and the number of
55 divisions changed accordingly.

Fitting on a shoulder 8 in the frame may be a protecting pane of glass 9, which is large enough to cover the entire opening in the front of the frame. The sliding panes 4 with
60 the pictorial or advertising matter thereupon, are inserted behind this large pane 9. As the panes 4 are readily removable sidewise through the slots 7, it will be seen that this matter can be changed just as frequently as
65 desired. In Figs. 2, 3, and 4 I have shown a screen 10 made of any translucent material, on which the pictorial matter can be placed, instead of being on the pane 4. This screen may be inserted between the large front pane
70 9 and the sliding pane 4, the latter as well as the former then constituting protection for the screen.

In the panels 1 may be a plurality of perforations 11, said panels being made extra wide,
75 in which advertising matter can be placed. A reflector 13 is secured to the outer edges of panels 1 of the frame, so that the perforations 11 are entirely within the confines of the reflector. Inside of the reflector is an incandescent lamp 14 of any ordinary type,
80 mounted on a thermostat 15, which causes the lamp 14 to flash intermittently.

The operation of the device is as follows: As the reflector is mounted so that it entirely
85 covers all of the openings through the panels, when the lamp 14 is turned on the rays of light will shine through the openings 11 in the panels, as well as through the panes 4, thus prominently displaying the advertising
90 or pictorial matter upon said panes or upon the screen 10. When it is desired to change the matter all that is necessary is to remove one of the panes 4 and insert another one in its place, or to change screen 10 for another
95 screen on which a different picture is found. The pictorial matter is placed in the frame merely to attract attention to the advertisements, and the intermittent flashing of the lamp also helps make the device more notice-
100 able.

Having thus described my said invention what I claim and desire to secure by Letters-Patent is:

1. In a device of the character described, the combination of a frame composed of panels, cross-pieces mounted in said panels, a plurality of panes of glass supported by said

panels and cross-pieces, a pane fixed in said frame covering and protecting said other panes, and a translucent screen disposed between the large and the small panes.

2 In a device of the character described, the combination of a frame composed of panels, a fixed front pane resting within said panels, a sliding rear pane and a translucent screen disposed between the two panes, a reflector mounted on said panels, and a lamp within the reflector, whereby rays of light are diffused through the panes and the screen.

3 In a device of the character described, the combination of a frame composed of panels, one of which is slotted, cross-pieces mounted in said panels, a plurality of panes on which advertising matter is placed supported by said panels and said cross-pieces, and a translucent screen placed between two of said advertising panes.

4 In a device of the character described, the combination of a main frame composed of panels, a plurality of cross-pieces mounted therein and serving to divide said frame into independent sections, a translucent screen displayed in one of said sections, and a plurality of separately-removable advertising panes displayed in the remaining sections, said panes being supported by said cross-pieces and said panels.

5 In a device of the character described, the combination of a main frame, a plurality of cross-pieces mounted therein and serving to divide said frame into independent sections, a translucent screen displayed in one of said sections, a plurality of separately-removable advertising panes displayed in the remaining sections, a reflector secured to said frame, and a lamp within the reflector, the lamp being so arranged that the rays of light

shine through said translucent screen and such of said panes.

6 In a device of the character described, the combination of a main frame composed of panels, the center portion of said frame being divided into a plurality of independent sections, a translucent screen displayed in one of said sections, a plurality of advertising panes displayed in the remainder of said sections, and a large pane covering and protecting all of said sections.

7 In a device of the character described, the combination of a main frame, a pictorial screen fixed in one section thereof, and advertising panes removably displayed in other sections thereof, said panes and said screen being independent of each other.

8 In a device of the character described, the combination of a main frame, a constantly-exhibited translucent screen, and a plurality of separately-removable advertising panes displayed in portions of said main frame not covered by said screen.

9 In a device of the character described, the combination of a frame composed of perforated panels, one of which is slotted, cross-pieces mounted in said panels, a plurality of sliding panes on which advertising matter is placed supported by said cross-pieces, and a translucent screen displayed midway between two of said advertising panes, said panes being displayed through both the opening in the center of said panels and through the perforations therein.

In testimony whereof I have affixed my signature in presence of two witnesses.

GEORGE L. THORNE.

Witnesses:

HUGH K. WAGNER,

FRANK D. THORNE.

Defendants' Exhibit "L."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "L." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

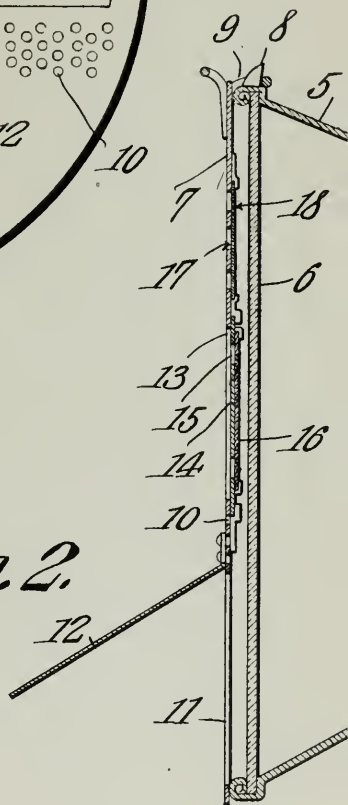
923,769.

Patented June 1, 1909



Fig. 1.

Fig. 2.



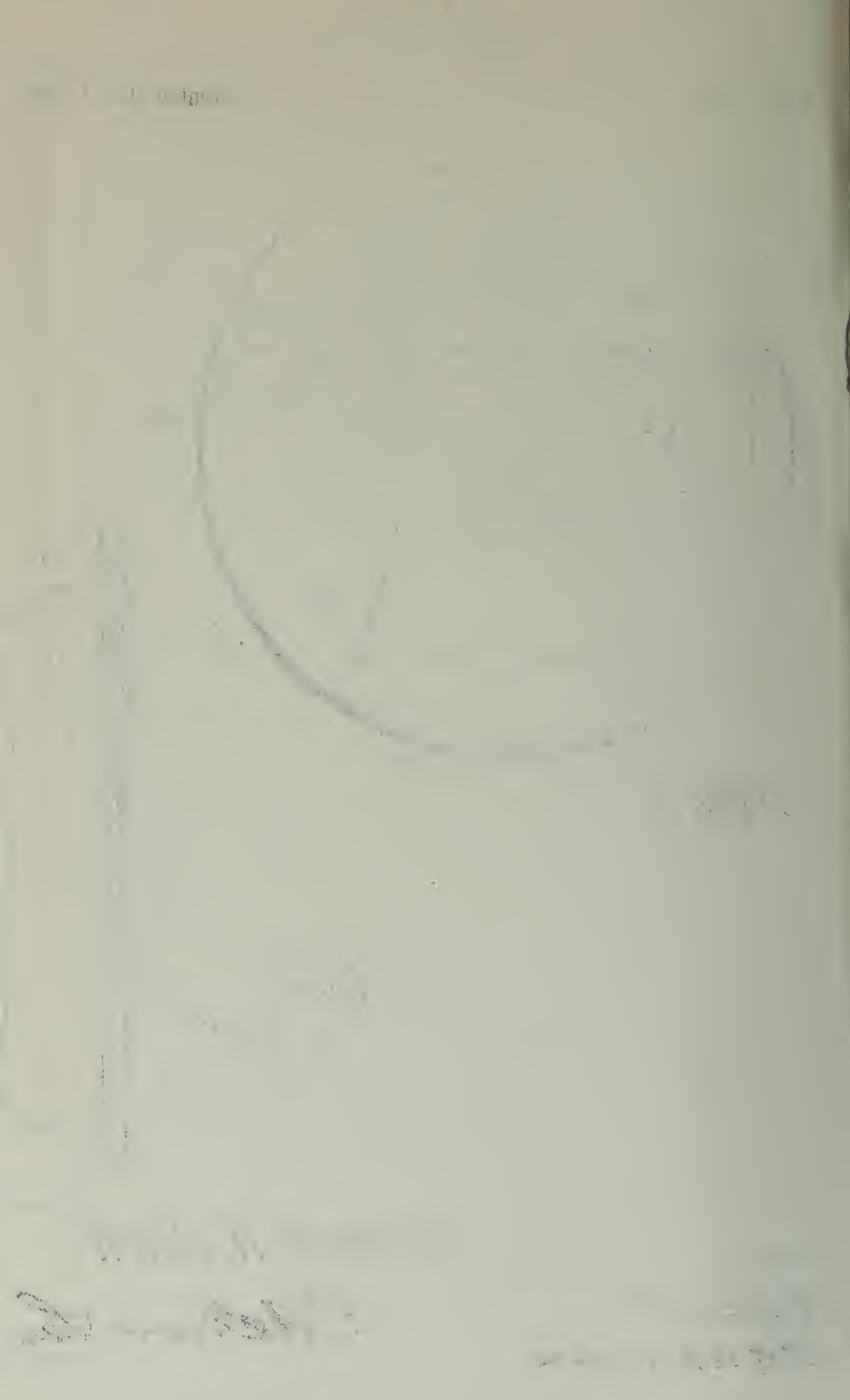
Witnesses

E. J. Howard
M. Schmidt

Richard W. Clark.

By *C. A. Snow & Co.*
Attorneys

Inventor



UNITED STATES PATENT OFFICE.

RICHARD WORTHINGTON CLARK, OF FREMONT, OHIO.

DIMMER FOR HEADLIGHTS.

No. 923,769.

Specification of Letters Patent.

Patented June 1, 1909

Application filed February 8, 1909 Serial No. 476,789.

To all whom it may concern:

Be it known that I, RICHARD W. CLARK, a citizen of the United States, residing at Fremont, in the county of Sandusky and State of Ohio, have invented a new and useful Dimmer for Headlights, of which the following is a specification.

This invention is a device to be used in connection with the headlight of interurban electric cars, by means of which the rays of light may be dimmed when the car is passing through city streets.

The object of the present invention is to provide a device of this kind which can be readily applied to the ordinary electric headlights now in use, and also to provide the device with means for displaying the name of the operating company or other information.

Another object of the invention is to provide a dimmer which throws a dim light straight ahead, and also one in which a portion of the rays of light are left unobstructed, and thrown downwardly on the track so that the motorman may observe the condition thereof.

With the foregoing objects in view the invention consists in a novel construction and arrangement of parts to be hereinafter described and claimed, reference being had to the drawing hereto annexed in which:—

Figure 1 is a front elevation of the invention. Fig. 2 is a central vertical section thereof.

In the drawings, 5 denotes the casing of an electric headlight of that kind employed on electric or other cars, and 6 is the glass door thereof through which the rays of light are thrown by the reflector. I have not illustrated the lamp nor the reflector as they form no part of this invention, the latter being constructed so that it may be applied to any ordinary electric headlight.

The dimmer comprises a plate 7 of sheet metal, or other suitable opaque material so that when placed in front of the door 6, the rays of light will be interrupted. The plate is circular, or of any other shape to correspond to the outline of the door 6, and it is hung on a lug 8 secured to the casing 5, and engageable with a loop 9 attached to the plate. In order that the rays of light may not be entirely interrupted, the plate 7 is provided with a plurality of perforations 10. These perforations are arranged in a group extending horizontally in a straight line across the plate below the horizontal median

line thereof as clearly shown in Fig. 1 of the drawing. By means of these perforations, the rays of light from the lamp are dimmed or subdued.

Below the group of perforations 10, the plate 7 has an opening 11 from the upper end of which projects a deflector plate 12. This plate is secured to the plate 7 in any suitable manner, and extends forwardly therefrom, and is also inclined downwardly, so that the rays of light passing through the opening 11 will be thrown on the track, the inclination of the plate 12 being such, that the rays are thrown a suitable distance in front of the car. The rays of light passing through the opening 11, are not dimmed, and a powerful light is therefore thrown on the track a suitable distance ahead of the car which enables the motorman to observe the condition thereof. The rays of light passing through the perforations 10 are thrown straight ahead.

Above the perforations 10, the plate 7 has an opening 13 in which is mounted a slide 14 comprising a plate in which are cut letters 15 which constitute a sign indicating whether the car is a local, limited, or special. It is obvious that the sign may display any other information. The plate 14 is also opaque, and the openings 15 forming the letters of the sign are covered by a sheet 16 of transparent or translucent material such as celluloid, glass, etc. By providing the hereindescribed slide, the same may be readily removed from the plate 7 and another one substituted containing different information.

Above the opening 13, letters 17 are cut in the plate 7, which letters may be the initials indicating the name of the operating company. Of course, any other information may be displayed. The openings forming these letters, are also covered by a transparent or translucent sheet 18.

By the construction herein described, the dimmer is also made to serve as an illuminated sign, the light visible through the translucent or transparent sheets covering the openings 15 and 17 forming the letters thereof. The sheets may be of any desired color.

It will be understood that the device is to be used only when the full rays of the headlight are objectionable or unnecessary, as when the car is passing through a town or city. Outside the city the dimmer will be removed, in order that the headlight will be entirely unobstructed.

The dimmer is extremely simple in construction, and therefore can be cheaply produced. It can also be readily applied to any ordinary headlight, and it effectually serves the purpose for which it is designed. The openings 10 provide enough light for city traffic, and by the opening 11, and the deflector 12, a beam of light is thrown downwardly on the track, and the same is illuminated sufficiently for the motorman to observe the condition thereof.

What I claim is.

1. A dimmer for headlights comprising an opaque plate having an opening, and a perforated portion, and a slide mounted in said opening, said slide being provided with open-

ings forming the letters of an illuminated sign.

2. A dimmer for headlights comprising an opaque plate having a group of perforations extending horizontally across its face below the horizontal median line thereof, and said plate having below said group of perforations an opening, and a deflector secured to the plate above said opening.

In testimony that I claim the foregoing as my own, I have hereto affixed my signature in the presence of two witnesses.

RICHARD WORTHINGTON CLARK.

Witnesses:

H. C. DE HAN,
BERT HOLMES.

Defendants' Exhibit "M."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "M." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

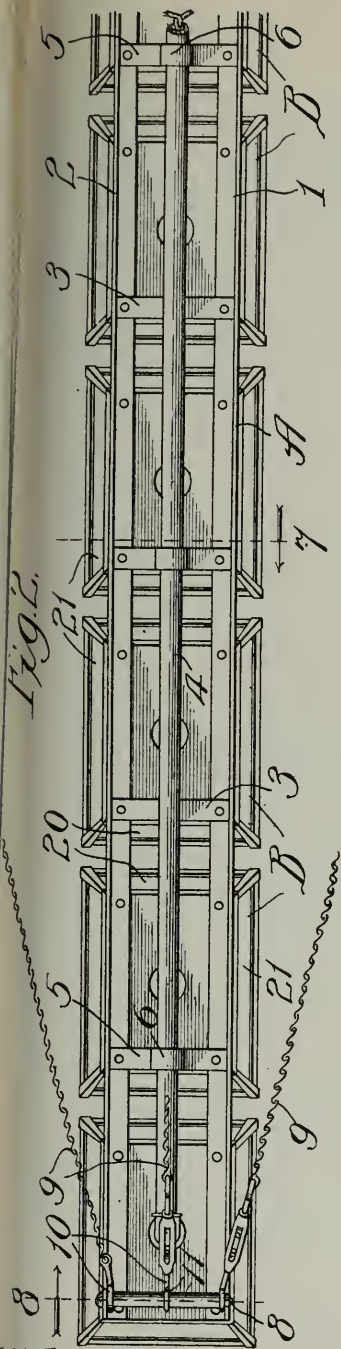


Fig. 2.

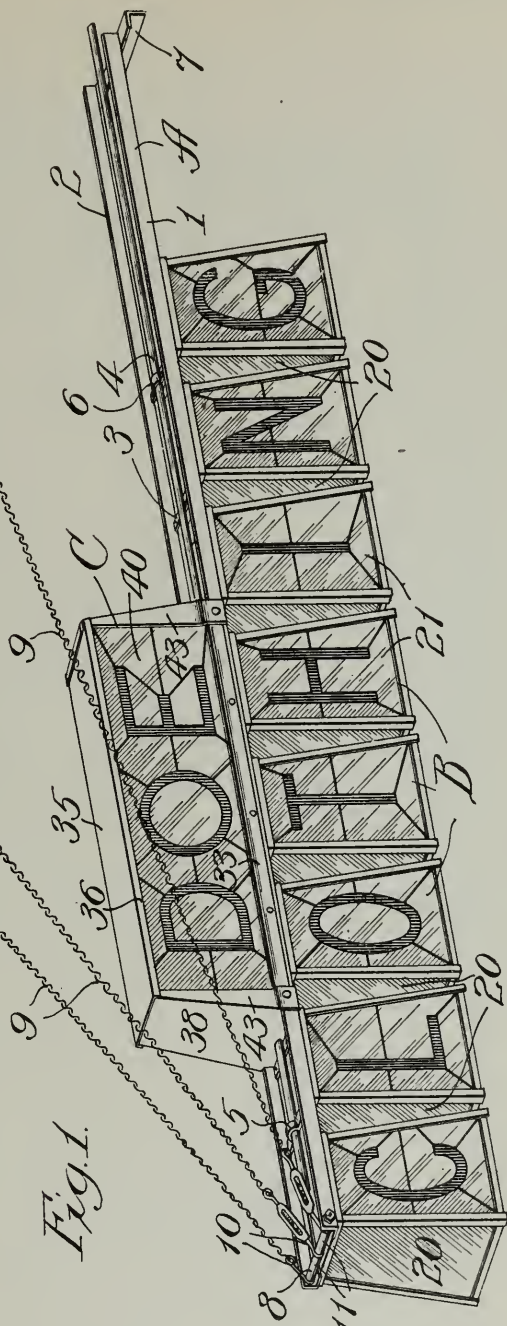


Fig. 1.

Witnesses:

John Enders
Chas. H. Quill.

Inventor

Clark C. Wortley.

By *Symonds, Lee, Christy & Miles*
Attys.

Fig. 9.

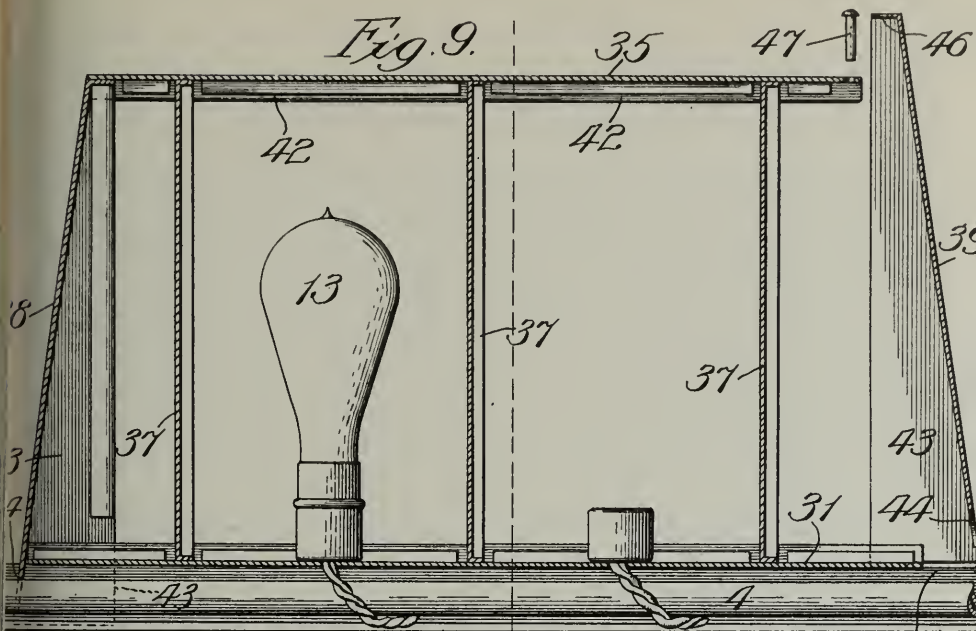


Fig. 10.

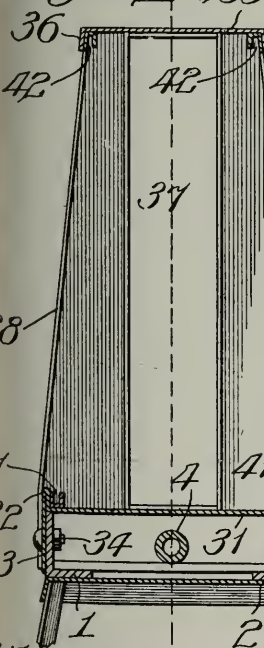


Fig. 11.



Fig. 13.

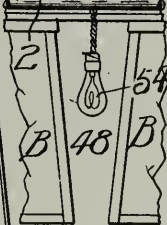


Fig. 14.

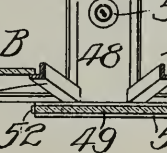
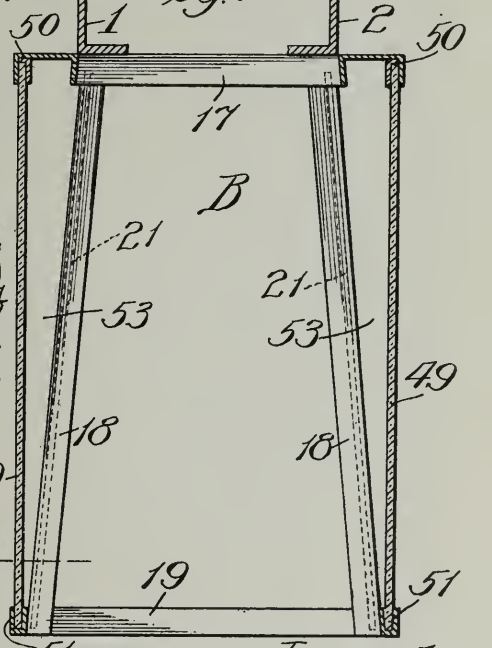


Fig. 12.



Witnesses:

John Enders
Chas. H. Buell.

21. B

18

52

49

51

52

By

Clark C. Wortley.

Attys.

of

Wiley

Christie

Lee

Clark C. Wortley.

Inventor.

CLARK C. WORTLEY OF CHICAGO, ILLINOIS.

SIGN.

983,593.

Specification of Letters Patent.

Patented Feb. 7, 1911.

Application filed January 6, 1909. Serial No. 470,912.

To all whom it may concern:

Be it known that I, CLARK C. WORTLEY, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented a new and useful Improvement in Signs, of which the following is a specification.

My invention relates particularly to signs adapted for street purposes and provided with illuminating means; and my primary object is to provide a sign of improved construction and appearance, capable of being manufactured at a moderate cost, and having provision for the ready substitution of new lettering or new lettered-panels.

The invention is illustrated in its preferred embodiment in the accompanying drawings, in which—

Figure 1 represents a perspective view of a sign constructed in accordance with my invention; Fig. 2, a plan view of the same with the upper section of the sign removed; Fig. 3, an enlarged broken longitudinal vertical sectional view showing the outer end-portion of the sign; Fig. 4, a transverse section taken, as indicated, at line 4 of Fig. 3; Figs. 5 and 6, horizontal sectional views taken, as indicated, at the corresponding lines of Fig. 3; Figs. 7 and 8, broken vertical sectional views taken, as indicated, at the corresponding lines of Fig. 2; Fig. 9, a broken longitudinal sectional view through the upper portion of the sign, showing one end-plate of the frame detached; Fig. 10, a broken transverse vertical section taken, as indicated, at line 10 of Fig. 9; Fig. 11, a broken perspective view of the end-plate which is shown detached in Fig. 9; Fig. 12, a transverse sectional view showing a modification; Fig. 13, a broken side elevational view, on a reduced scale, of the construction shown in Fig. 12; and Fig. 14, a broken section taken, as indicated, at line 14 of Fig. 12.

Referring to Figs. 1 to 11, inclusive, the construction, in the form illustrated, comprises a horizontally-disposed frame A which may be connected with the side of a building in any suitable manner; a series of illuminable sign-sections, or panel-equipped devices B depending from the frame A; and a sign-section, or panel-equipped illuminable device C surmounting the frame A.

The frame A preferably is constructed of a pair of angle-bars 1 and 2 extending parallel with each other and separated by a space of a few inches; transverse-bars or

spacing-members 3 connecting said angle-bars; a centrally-disposed transverse member 4 resting on the cross-bars 3; and a pair of transverse bars 5 connected with the ends of bars 1 and 2 and having their outer end portions curved upwardly, as indicated at 6, to accommodate the tubular member or pipe 4. The angle bars 1 and 2, which are disposed in a horizontal plane, have one set of flanges turned toward each other and the other set of flanges turned upwardly, as will be readily understood from Fig. 7, whereby a space is afforded between the vertical flanges in the central portion of which the pipe 4 is located.

The inner end of the frame A is shown equipped with an angle-bracket 7 which may be connected with a wall of a building; and the outer ends of the bars 1 and 2 are connected by a bolt 8, with which are connected supporting cables 9, represented as three in number. The cables 9 are equipped at their outer ends with connecting members 10 which are pivotally joined to the bolt 8. One of the cables is connected with the central portion of the bolt and the other two with the end-portion thereof, the members 10 being separated or spaced by spacing-sleeves 11.

The pipe 4 serves as a conduit for electric conductors 12, which may pass from the building through said pipe, said conductors having connected therewith electric lights 13 located in chambers B and C. The outer end of the pipe 4 is equipped with an elbow 14 having a down-turned open end through which the conductors for the last of the series of lamps 13 pass. Said pipe is also provided at intervals in its lower side with perforations or outlets 15 through which the electric conductors for the lamps may pass.

While the bracket 7 provides for a substantially rigid connection between the inner end of the frame A and the building, it will be understood that any desired connection may be employed at this point.

Each panel-equipped device or chamber B preferably comprises a sheet-metal top-plate 16 of rectangular form and having down-turned flanges 17; angle-form corner-members 18 depending from the corners of the flanged top-plate 16 and inclining as shown; a channel-form lower rim-member 19 connected with the lower ends of the corner-members 18; transparent end-panels 20; and transparent character-bearing side-

panels 21. The flanges 17 form an upper rim-member within which the upper margins of the glass-panels 20, 21 are received, channels 22 being provided for the reception of the upper ends of the glass-panels by attaching angle-form clips or lugs 23 to the top-plate 16, the depending flanges of said members 23 co-acting with the flanges 17. Preferably the upper ends of the corner-frame members 18 fit within the corners formed by the flanges 17, said members 18 being secured by means of solder; and the members 23 may likewise be secured in place by means of solder. The channel-bars 19 which form the lower rim-member preferably have relatively wide upturned outer flanges 24 and relatively narrow upturned inner flanges 25, the flanges 25 being narrower than the length of the depending flanges of the members 23, so that the panel may be inserted by entering its upper end in the channel 22, passing the lower end over the flange 25 of the lower rim-member, and then allowing the panel to drop into the channel 26 of the lower rim-member. Within the corners of the angle-bar corner-members 18 are soldered small reversely-flanged members 27 which afford bearings for the edges of the glass-panels; and to the inner surfaces of the flanges of the angle-bar corner-members 18 are soldered flexible sheet-metal members 28, which may be bent, according to necessity, to secure the vertical margins of the glass-panels. The members 28 may likewise be bent back to permit the glass-panels to be removed, either for the purpose of washing the same or substituting other panels. The panels 21 may serve as individual panels for the reception of letters, so that when the panels are rightly associated a name is produced. The lower ends of the chambers B may be left open. As thus described, each chamber, or panel-equipped device, B presents somewhat the appearance of a truncated hollow pyramid with transparent sides, two of the sides being employed for receiving sign-characters. The top-plates 16 are provided with central-perforations 29 through which depend the electric-conductors with which the electric lamps 13 are connected, each chamber thus serving as an individual housing for an electric-light. Each top-plate 16 is detachably connected with the horizontal flanges of the angle-bars 1 and 2 by means of bolts 30.

The surmounting device C, as will be understood by reference to Figs. 1, 9, 10 and 11, preferably comprises a sheet-metal bottom-plate 31, which is supported on the angle-bars 1 and 2, the metal of which is bent up and then back upon itself to afford upturned flanges 32, the metal being then extended downwardly to form flanges 33 which embrace the vertical flanges of the angle-bars 1 and 2, and are connected therewith by

means of bolts 34; a sheet-metal top-plate 35 having downturned lateral flanges 36; vertically-disposed sheet-metal division-plates 37 connected at their lower ends with the bottom-plate 31 and at their upper ends with the top-plate 35; end-plates 38 and 39, the latter of which is removable; and glass-panels 40 forming the sides of the chamber and removably inserted in guides 41 and 42 with which the bottom plate 31 and top-plate 35 are equipped, respectively, on their inner surfaces. The guides 41 and 42 may be formed by securing small channel-bars adjacent to the flanges 32 and 36, as illustrated. The end-plates 38 and 39 incline, as shown in Fig. 9, and have lateral flanges 43 adapted to embrace the end-portions of the bottom-plate 31 and top-plate 35, said flanges 43 serving also to house the end of the glass-panels 40. As shown in Fig. 1, the lower ends of the plates 38 and 39 are provided with central recesses 44 which accommodate the pipe 4, and with recesses 45 which accommodate the flanges 32 and the vertical flanges of the angle-bars 1 and 2. As has been indicated, the end-plate 39 is removable. It is provided at its upper end with an intumed flange 46 adapted to fit over the top-plate 35, said flange and top-plate being provided with perforations adapted to receive a pin 47. The vertical plates 37, the bottom-plate 31 and the top-plate 35 may be enameled or painted white on the surface presented to the interior of the chamber, in order to reflect the light from the lamps 13. This may be true, also, of the interior surfaces of the end-plates 38, 39. To remove the panels 40 it is necessary only to remove the end-plate 39, when the panels may be moved longitudinally in their guides.

A sign of the construction described is strong, durable and of pleasing design and appearance. The individual panels are removable for the purpose of renewal or substitution, and, in case of breakage, the expense of repair is reduced to a minimum. Ordinarily, art-glass is employed in the transparent panels, hence the economy resulting from the possibility of renewing the panels or letters individually is of great importance. The surmounting device C may or may not be employed. When it is employed it may serve to receive the name of a merchant, the individual panels serving to indicate the character of the business conducted. The construction provides for securely housing the electric conductors and hiding the conduit which contains them from view when the sign is viewed from the street, and the open-work construction of the frame A prevents objectionable accumulation of dirt and permits the sunlight to pass between the devices B and through the end-panels 20 thereof, thereby insuring

good illumination of the letters in the day-time.

In the modification illustrated in Figs. 12, 13 and 14, the general construction is the same as the construction already described, and the parts are similarly lettered. In this construction, however, the spaces 48 between the adjacent devices B are flanked by glass-plates or panels 49 held by channel-form guides 50 and 51 carried by the upper and lower rim-members 17 and 19 of the frames of adjacent devices B. The panels 49 are secured in the channels 50 and 51 by lugs 52, as shown in Fig. 14. As will be understood from Figs. 13 and 14, the edges of the panels 49 overlap or project past the corners of the adjacent devices B slightly; and the panels 49, as will be understood from Fig. 12, are carried at a short distance from the glass-panels 21 of the devices B, being separated by a space 53, so that light thrown upon the inner surfaces of the panels 49 may be reflected upon the outer surface of the panels 21. In this construction, electric-lights 54 may be located between adjacent devices B, so as to throw light upon the inner surface of the panels 49 from whence it will be reflected upon the outer surfaces of the panels 21. Where the modified construction is employed, the lamps within the devices B may be dispensed with, if desired, and so also may be the end-panels 20 of the devices B.

The foregoing detailed description has been given for clearness of understanding only, and no undue limitation is to be understood therefrom.

What I regard as new, and desire to secure by Letters Patent, is—

1. In a sign, the combination of a supporting-frame, a series of panel-frames depending therefrom, each comprising a top-plate provided with panel-receiving channels, corner-members depending from said top-plate, and a lower rim supported by said corner-members and having a channel bounded by a relatively narrow inner flange, and removable character-bearing panels received in said channels.

2. In a sign, the combination of a pair of

angle-bars having one set of flanges turned toward each other and another set of up-turned flanges, cross-members connecting said angle-bars, a pipe supported on said cross-members, panel-supporting frames depending from said angle-bars, character-bearing panels carried by said panel-supporting frames, electric lights serving to illuminate said panels, and electric conductors connected with said electric lights and extending through said pipe.

3. In a sign, the combination of a horizontally-disposed frame, a series of horizontally alined panel-frames depending therefrom, character-bearing panels carried by said panel-frames, and a surmounting device carried by said frame and comprising a frame and character-bearing panels removably connected therewith.

4. In a sign, the combination of a horizontally-disposed open frame, a pipe supported thereon and provided in its lower side with openings, electric conductors in said pipe extending through said openings, a series of horizontally alined panel-frames depending from said first-named frame, character-bearing transparent panels supported by said panel-frames, electric lights within said frames, a device surmounting said first-named frame comprising a frame composed of a top-plate and end-plates, removable character-bearing transparent panels carried by said last-named frame, and an electric light within said last-named frame, said conductors being connected with said electric lights.

5. In a sign, the combination of a pair of angle-bars having a set of flanges turned toward each other and another set of up-turned flanges, cross-bars connecting said angle-bars, a cross-bolt connecting the outer ends of said angle-bars, cables connected with the central and end portions of said bolt, spacing-sleeves on said bolt, and a series of panel-equipped individual frames depending from said angle-bars.

CLARK C. WORTLEY.

In the presence of—

A. U. THORLEN,
R. A. SCHAEFER.

Defendants' Exhibit "N."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "N." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

A. M. HARRIS.

DIRECTION INDICATOR.

APPLICATION FILED JAN. 14, 1916.

1,238,763.

Patented Sept. 4, 1917

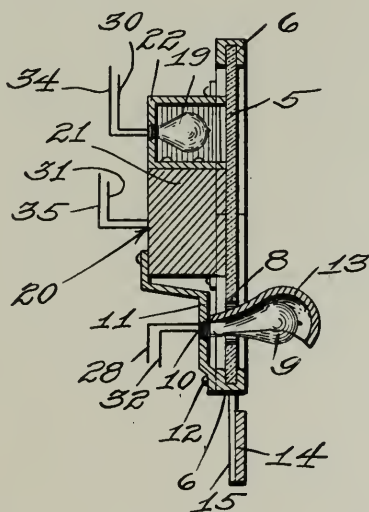
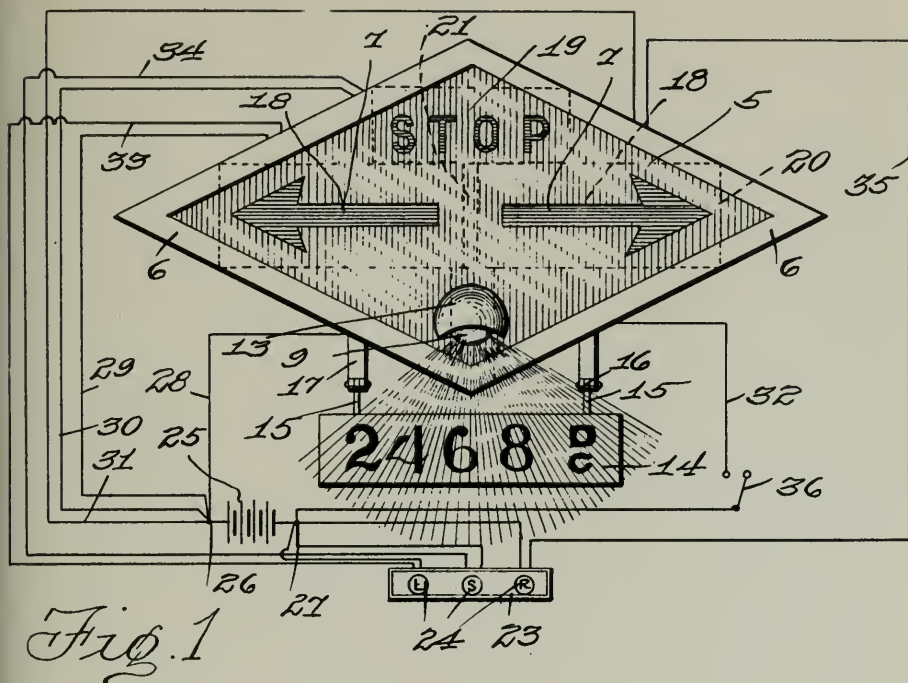


Fig. 2.

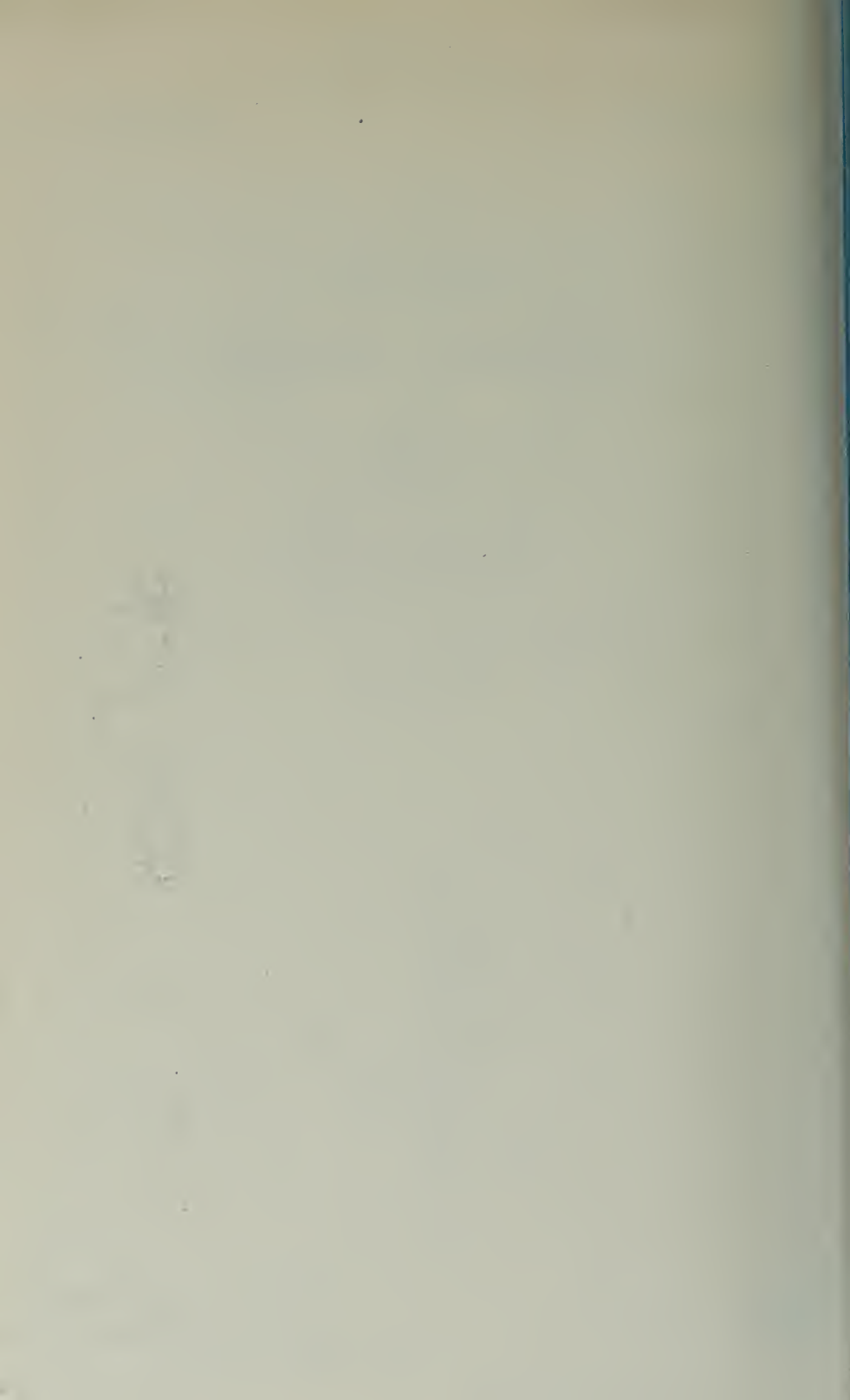
Witnesses

W. S. Squire,
C. V. F. Hewlode

By

Alfred M. Harris,
Richard Owen.

Attorne



UNITED STATES PATENT OFFICE.

ALFRED M. HARRIS, OF DETROIT, MICHIGAN, ASSIGNOR OF THREE-EIGHTHS TO JOSEPH J. SULLIVAN, OF DETROIT, MICHIGAN.

DIRECTION-INDICATOR

1,238,763.

Specification of Letters Patent.

Patented Sept. 4, 1917.

Application filed January 14, 1916. Serial No. 72,155.

To all whom it may concern:

Be it known that I, ALFRED M. HARRIS, a citizen of the United States, residing at Detroit, in the county of Wayne and State of Michigan, have invented certain new and useful Improvements in Direction-Indicators, of which the following is a specification.

This invention relates to direction signals for automobiles or other vehicles, and as a particular object aims to provide a device of this character whereby the driver will be enabled to readily signal pedestrians or following cars an intended change of direction in the course of his vehicle.

A further object is to provide a direction signal which shall be readily applicable to either the forward or rear portions of an automobile or other vehicle in order to indicate simultaneously at each portion a change in the direction of the vehicle's travel to persons both approaching and following the car, whether on foot or driving other vehicles.

A still further object is to provide a signal of the simplest sort which will be usable either at night or in the daytime and which may be electrically controlled by the driver in such manner as not to interfere in any way with his operation of the ordinary driving mechanism, and at the same time to furnish an indicator of this type, which may be cheaply manufactured and also durable and efficient in operation.

The above and additional objects which will become apparent as this explanatory description proceeds, are accomplished by such means as are illustrated in the accompanying drawings, described in the following specification, and then more particularly pointed out in the claims which are appended hereto and form a part of this application.

With reference to the drawings, wherein there is illustrated the preferred embodiment of this invention, as it is reduced to practice, and throughout the several views of which like characters of reference designate similar parts:—

Figure 1 is an elevational view of the direction indicator comprehended by this invention with its wiring diagram, and

Fig. 2 is a vertical sectional view through the device.

In attaining the objects of this invention, there is made use of an indicating plate designated as a whole by the numeral 5 and preferably constructed from glass or some other transparent material, the exposed edges of which may be protected by suitable binding 6, metallic or otherwise. A most convenient shape for this indicating plate is illustrated in the drawings in the diamond form which accommodates itself readily to certain necessary qualifications for a plate of this character. The background of the plate is preferably of a dark color in order to contrast with the oppositely directed laterally extending arrows 7 which are also transparent and preferably formed integrally with the main body of the indicating plate 5, although differently colored, such as white or a light red in order to attract attention by contrast with the dark background when illuminated from behind as directed by this invention.

The arrows 7 are normally not distinctive enough to particularly attract attention until so illuminated and are adapted to be separately illumined in indicating a proposed turn of the vehicle to either the right or the left. The body 5 is formed with an aperture 8 adjacent the lower central corners of the diamond-shaped plate 5 in order to receive the incandescent lamp 9 which may be inserted through this aperture and removably secured as at 10 in a bracket 11 secured to the binding 6 by means 12 at this lowermost point. A reflector 13 is also secured to the bracket 11 and arranged over and partially around the lamp 9 in such manner as to direct the light from this latter upon a license plate 14 as particularly illustrated in Fig. 1, such plate being supported by hangers 15 forming hinged connections 16 with the bifurcated extremity of supports 17.

The illumination for the arrows 7 and for the "Stop" indication is assured by the incandescent lamps 18 and 19 respectively, the former being secured in a suitable box-like casing 20 in horizontal alignment separated by the partition 21 and each directly behind its respective arrow 7. The "Stop" indication is assured by forming the letters of this word in the back ground of the plate 5 in any manner similar to the arrows, and the lamp 19 to illuminate these

letters is mounted within a casing 22 superimposed above the first casing 20 and like this latter presenting an open face to the rear of the plate 5.

5 Since suitable manual control means are to be provided for separately illuminating the lamps 15 and 19, a switch plate 23 is preferably positioned at some point adjacent the hand of the driver of the car and may
10 indeed be inset into the rim of the steering wheel if desired. This plate carries a trio of buttons 24 adapted to make separable contacts and lettered respectively L, S and R and indicate the left arrow, the stop the
15 right arrow. These button switches are adapted to be connected with their lamps in multiple with a suitable source of difference of potential 25 provided with terminals 26 and 27.

20 From the former terminal, wires 28, 29, 30 and 31 lead respectively to the license plate lamp 9, the left arrow lamp 18, the stop indicator, and the right arrow 18. From each of these lamps, return wires 32, 33, 34 and 35 respectively lead to the opposite
25 battery terminal 27 and the last three of these include in their circuit the previously mentioned button switches normally maintained out of contact until depressed to allow
30 the momentary lighting of the particular lamp to assure a signal of the intended direction of the vehicle to be given. The return wire 32, however, includes in circuit the single throw switch 36 whereby the license
35 plate lamp may be turned out whenever desired without interfering with the operation of the other separate circuits.

40 From the foregoing it should be obvious, without necessitating any further discussion of the operation thereof, that means have

been disclosed whereby the previously presented objects are capable of being accomplished so that this invention may, accordingly, be claimed as possessing the advantages and desirability set forth in such objects.

What is claimed is:

1. A signal comprising a transparent plate having indicia thereon and also provided with an opening, illuminating means
50 for the transparent plate, a second plate mounted below the transparent plate and also having indicia thereon, and a reflector positioned in the opening in the transparent
55 plate to project light rays upon the second mentioned plate.

2. A signal comprising a transparent plate having indicia thereon and further provided with an opening, a casing positioned behind the transparent plate and
60 carrying illuminating means, a second plate mounted below the transparent plate and also having indicia thereon, and a reflector extending through the opening to project
65 light rays upon the second mentioned plate.

3. A signal comprising a transparent plate having indicia thereon and further provided with an opening, a casing positioned behind the transparent plate and carrying illuminating means, means connected with the
70 bracket and projecting through the opening, a reflector also carried by the bracket, and a license plate disposed below the reflector.

In testimony whereof I affix my signature 75 in presence of two witnesses.

ALFRED M. HARRIS.

Witnesses:

W. E. FITCH,

JOHN J. BLAVET.

1,081,800.

Patented Dec. 16, 1913.

2 SHEETS—SHEET 1.

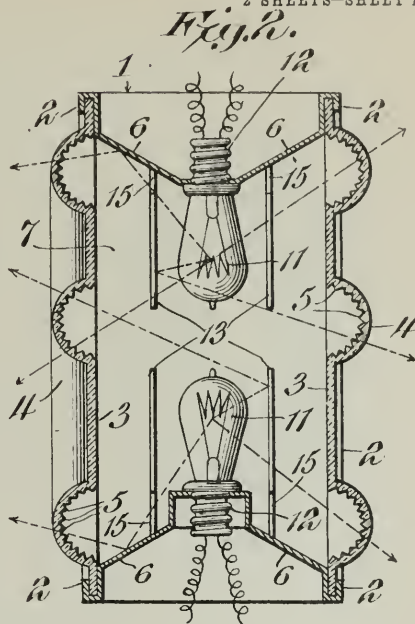
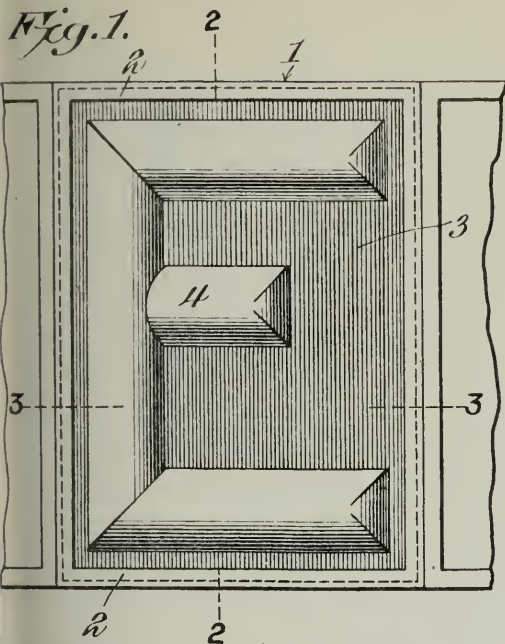


Fig. 3.

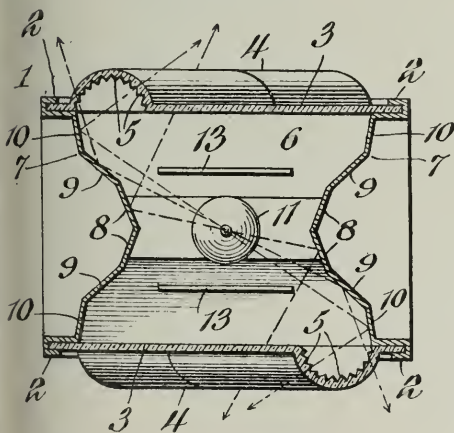
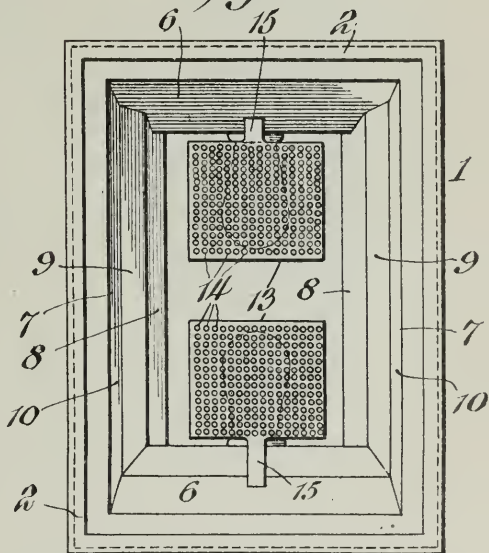


Fig. 4.



Witnesses

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By

E. J. Siggers

Attorney

1,081,800.

Patented Dec. 16, 1911

2 SHEETS—SHEET 2.

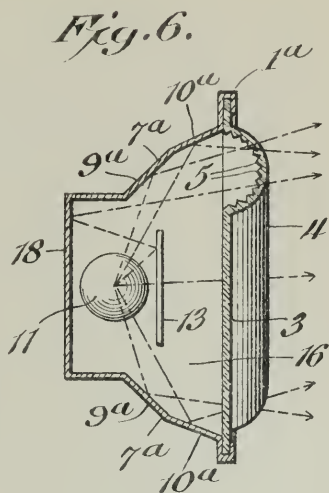
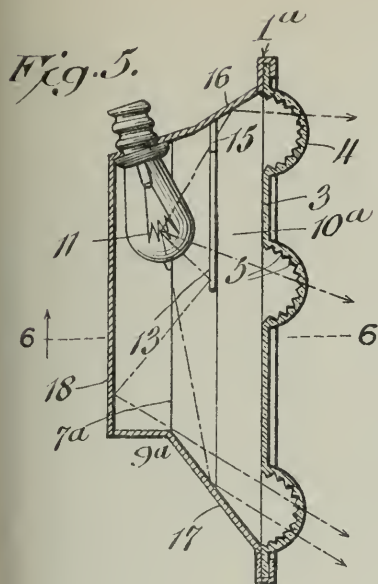
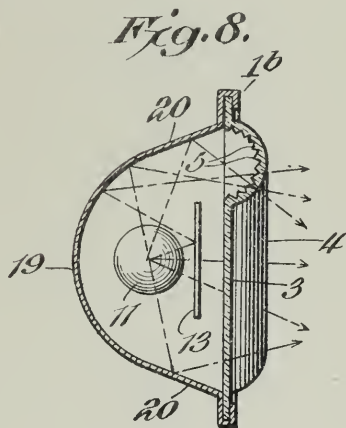
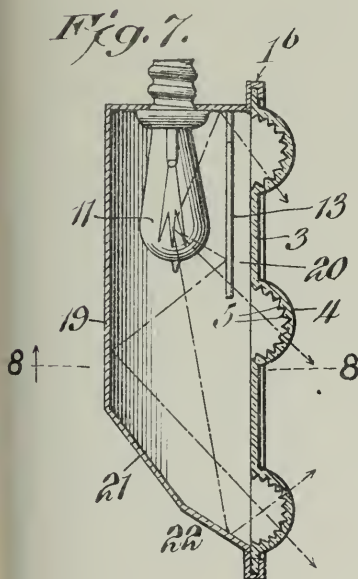
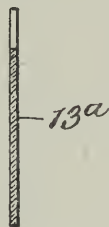


Fig. 9.



Roy R. Wiley
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By

E. J. Siggers.

Witnesses

Howard D. Ott.

4 5 D. 1

UNITED STATES PATENT OFFICE.

ROY B. WILEY AND WALLACE K. WILEY, OF BUFFALO, NEW YORK, AND WILLIAM S. HOUGH, JR., OF ST. CATHERINES, ONTARIO, CANADA.

ILLUMINATED SIGN.

1,081,800.

Specification of Letters Patent.

Patented Dec. 16, 1913.

Application filed June 21, 1911. Serial No. 634,602.

To all whom it may concern:

Be it known that we, ROY R. WILEY and WALLACE K. WILEY, citizens of the United States, residing at Buffalo, county of Erie, State of New York, and WILLIAM S. HOUGH, JR., a citizen of the United States, residing at St. Catherines, Province of Ontario, Canada, have invented a new and useful Illuminated Sign, of which the following is a specification.

This invention has reference to improvements in illuminated signs, and its object is to provide an illuminated sign which shall be clearly visible both in daylight and at night, and in the latter case when illuminating means is utilized, the source of light will so affect the parts to be lighted as to produce a sensibly even illumination of all parts of each letter or character of the sign without blurring, all portions of each character receiving a due proportion of light.

In accordance with the present invention the characters are formed of transparent or translucent material, such as glass, with the inner walls, that is the walls remote from the observer, or, if desired, the outer walls, prismatic, so that the light rays are broken up, and blurring, which is liable to occur when intense light is directed through the front of the latter, is avoided. The prismatic effect may be produced by ridges or otherwise, and greatly enhances the brilliancy of the letters as viewed by daylight.

The light source or sources are commonly in the form of electric lights of any suitable character, and the light rays emanating from the source or sources of light are modified by a screen interposed between the character to be illuminated and the source of light, this screen being usually in the form of a perforated plate, although it may be otherwise constructed so long as it is capable of transmitting some of the light coming from the source of light and reflecting a portion of the light. In conjunction with the screens there are provided reflecting surfaces so related to the letters, that the light rays will find their way through the inner walls of the letters in lines varying from a close approach to perpendicularity with relation to the front of the characters to angles which will cause the light rays to pass through the light transmitting portions of the characters at the sides thereof in lines at considerable angles to the first named

rays. By the present invention the light rays are so distributed that the letters or characters, the surfaces of which are raised, receive the light in such an evenly distributed manner that whether the observer views the letters directly in front or above or below, or to one side, the illumination appears to be equally brilliant.

The invention will be best understood from a consideration of the following detailed description, taken in connection with the accompanying drawings forming a part of this specification, with the understanding, however, that while the drawings illustrate several practical embodiments of the invention, the latter is susceptible of other practical embodiments, and, therefore, is not limited to the exact showing of the drawings, but may be variously modified within the scope of the invention as expressed in the claims.

Referring to the drawings: Figure 1 is a front elevation of a portion of a sign showing particularly one character thereof. Fig. 2 is a section on the line 2—2 of Fig. 1. Fig. 3 is a section on the line 3—3 of Fig. 1. Fig. 4 is a face view of one element of the sign with the character portion removed. Fig. 5 is a view similar to Fig. 2, but showing an arrangement wherein the sign is provided with but a single light transmitting face. Fig. 6 is a section on the line 6—6 of Fig. 5. Fig. 7 is a section similar to Fig. 5, but showing still another form of the invention. Fig. 8 is a section on the line 8—8 of Fig. 7. Fig. 9 is a sectional view of a modified form of screen or light toning down means.

A sign constructed in accordance with the present invention may be either double face or single face and both forms are illustrated in the drawings. The sign may be made up of units each of which embraces a single character if of the single face type, or two like or different characters if of the double face type, and one or more light giving units may be housed in each sign unit, the usual mode of illumination being in the form of an electric lamp of appropriate type.

In the drawings there is shown a sign unit in the form of an appropriate frame or casing in size and general shape being the same for all the several characters of the sign. The frame of the unit may be made of metal or other suitable material with a bor-

4 14

der flange 2 adapted to embrace the edges of a plate 3 upon which is produced a sign character 4, shown in the particular illustration of the drawing as comprising the letter "E," but, of course, it will be understood that this is simply indicative of any sign character of any kind.

The plate 3 is usually though not necessarily made of some transparent or translucent material capable of transmitting light either freely or partially, and the material best adapted for the purpose is glass. The character is produced upon the glass plate 3 in raised relation thereto, the portions of the character being in cross section preferably semi-circular or approximately so, although this does not preclude the formation of the character in a different shape. By so forming the character, and at the same time producing on the inner walls of the character ribs 5 or other shapes, the inner wall of the character is made more or less prismatic. The plane portion of the plate may be made opaque to light, so that light rays emanating from a source of light on one side of the plate will find passage there-through only where the light transmitting portions agreeable to the shape of the character are present. That side of the plate toward the light source presents a reflecting surface.

In the particular double structure shown in the drawings there are reflectors 6 at the top and bottom of each element 1 slanting from the respective top and bottom margins of the sign character toward an intermediate plane about midway between the two sign characters, so that these reflectors, which are straight reflectors extending from side to side of respective sign characters, are each at an acute angle to the plane of the inner face of the sign character. At each side of the element 1 there are reflecting walls or reflectors 7 each composed of sections 8, 9 and 10 each at an obtuse angle one to the other and at an acute angle to the plane of the rear face of the respective sign character, the reflectors 7 having a general slant inwardly toward the center of the element from the sides of the respective sign character. The section 10 of each reflector 7, which section is next to the inner wall of the sign character, is related to the general plane of the rear wall or face of the sign character, so as to be at an angle thereto of a little less than ninety degrees. The section 9 is at an obtuse angle to the section 10 but at a less angle to the plane of the rear face of the sign character. The section 8, which is the most distant of the sections of the reflector 7 from the sign character, is at an obtuse angle thereto intermediate of the angles of the sections 9 and 10.

In the particular structure shown in Figs. 1 to 4 there are two light sources 11, indi-

cated as the filament of an incandescent electric lamp, but this is to be considered as simply indicative, for any other type of lamp adapted to the purpose may be used. These lamps in the particular showing of the drawings have their tip ends directed one toward the other and their base ends at the top and bottom of the casing, respectively, it being understood, of course, that suitable supports in the form of appropriate sockets 12 are provided. If light produced from the lamps be allowed to reach the light transmitting walls of the character 4 in direct lines from the light sources, some portions of the character will be strongly illuminated and other portions will receive much weaker light rays, with the result that the character will appear to be unevenly illuminated. To cause a distribution of the light whereby the light rays will reach with substantially equal intensity all parts of the light transmitting portion of the sign character, there is introduced between the inner wall of the plate 3 and the lamp 11 a screen 13 in the form of a flat or other shaped plate, such screen in the particular showing of Fig. 4 being provided with numerous perforations 14. The screen 13 is of a height and breadth sufficient to interpose or come between the eye of the observer and the light source at substantially all angles of direct vision through the strokes of the sign character. The inner walls of the members 6 and 7 and those walls of the screens 13 toward the lamps 11 are reflecting surfaces, while the screens are supported by narrow stems 15 outstanding from the respective walls 6.

The light rays emanating from the light giving elements of the lamps will in part pass through the perforations 14 and in part will be reflected by the adjacent surface of one or the other of the screens 13. Those light rays which pass through or by the screens will either reach a light transmitting portion of a character or will strike one of the reflecting walls of the element 1, and those light rays which do not pass through or strike the screen will directly reach the reflecting walls of the sign element 1, and by these walls will be diverted to the light transmitting portions of the character at different angles, ranging from lines almost perpendicular to the front surface of the character to lines varying sufficiently from the first named lines to traverse the sides of the raised portion of the character, so as to reach the eye of the observer, whether above or below the character, or to either side thereof, apparently as coming directly from the light source. The diversity of angles at which the light is directed is caused by the different and many angular positions of the reflector surfaces, all of which are straight and flat and inclined to the general

plane of the rear of the sign character, so that light is multi-directionally reflected to the inner walls of the hollow strokes of the relief character and is further dispersed by the prismatic inner walls of the hollow relief strokes of the sign character. There is, however, loss of light due to reflection and varying distances of portions of the sign character from the source of light, but by properly proportioning the parts the differences in illumination of the various portions of the character are so slight that these differences are not sensible to the observer, wherefore the illumination by reflection may be said to be equal throughout the light transmitting portion of the character. The screens 13 by cutting off a large portion of the direct rays from the character further equalize the light and prevent that intensity of illumination of the character which would otherwise be apparent when the character is viewed from in front, and this modification and toning down of the direct light rays contributes to the even distribution of light resulting in the even illumination of the character, while the prismatic effect due to the ribbed or other shaped inner walls of the light transmitting portion of the character contributes to the prevention of blur.

The angular form of the reflecting walls of the casing or receptacle for the light giving element, which walls are presented toward the character carrying face of the receptacle, causes the distribution of the light in the manner stated, without the necessity of making the light receptacle of so great a depth as is necessary where parabolic reflectors are used, while the spread of the light whereby the sides, as well as the front of the characters, are illuminated, is found to be better accomplished than with a parabolic reflector.

So far the sign element described has been of the double face type. With a single face sign there is provided a casing or sign element 1^a as shown in Figs. 5 and 6, or 1^b as shown in Figs. 7 and 8. The plate 3 and the transparent portions defining the character 4 are the same as in the other forms, and the light element 11 and the screen 13 are the same as in the other form already described. In this structure the light element 11 may be arranged say at the top of the casing of the sign element and the top wall may be inclined as shown at 16, while the lower wall may be oppositely inclined as shown at 17 and the back of the casing may be in the form of a reflecting wall 18 substantially parallel with the plate 3. The inner faces of the walls 16, 17 and 18 are made reflecting, and the parts are so disposed that in conjunction with the screen 13 light rays are directed through the light transmitting portions of the character in various directions to approximately evenly distribute the

light throughout these light transmitting portions, wherefore the character appears to be brilliantly illuminated from whatever angle it be viewed. In the structure shown in Figs. 5 and 6 the upright walls of the casing are indicated at 7^a and have angle portions 9^a and 10^a corresponding to the like portions 9 and 10 of the structure shown in Figs. 1 to 4, and serve a like purpose, while the reflecting portion of the screen 13 and the reflecting portion of the backing 18 of the casing contribute toward the even illumination of the entire visible surface of the character.

In the structure shown in Figs. 7 and 8 the plate 3 and character 4, as well as the light element 11 and screen 13, are substantially the same as the like parts in the structures shown in the other figures. In the structures shown in Figs. 7 and 8, the light giving element 11 is at the top of the sign element, although, of course, it will be understood that by a reversal of the parts in this form of the invention, as well as in the other form shown in Figs. 5 and 6, the light giving element might be located at the bottom of the sign element. In the structure shown in Figs. 7 and 8 the casing indicated at 19 is approximately parabolic in cross section, such section being taken transversely of the longitudinal axis of the lamp 11, and also transversely to the length of the sign character, although the walls of the casing where approaching the plate 3 may be approximately flat as indicated at 20, while disposed at an angle to the plane of the plate 3. The end of the casing 19 remote from the lamp 11 is formed with inner walls 21, 22 at an angle to each other, and to both the main portion of the casing 19, and the plate 3, so that a number of reflecting surfaces are provided directing the light at various angles through the corresponding portion of the sign character.

In the forms shown in Figs. 5 and 7 the light element is near one end of the sign character, but instead of brilliantly illuminating this end of the sign character the intensity of illumination is modified by the screen 13, so as to substantially equalize the illumination of the character adjacent the light element with the illumination of the other end of the sign character where it is comparatively distant from the light element, and the light rays are directed at various angles through the corresponding portions of the sign character, whereby the character is well illuminated from whatever angle it may be viewed, the prismatic form of the inner walls of the light element preventing objectionable blurring liable to occur where such light distributing means are omitted, for by refracting and breaking up the general direction of the intense light from the reflectors, the letters appear uni-

formly and brightly lighted even from an angle. Not only is the effect from the front greatly improved, but, since most of the light rays are diverted from a path perpendicular to face of the letter where they issue therefrom, a minimum of rays are observed from a distance and the letter is not blurred.

The screen may be of perforated metal, as in Fig. 4 or may be of glass, as shown at 13^a in Fig. 9, different types of glass having been successfully used, but whatever be its character the purpose of the screen is to modify by reduction the amount of light transmitted by the light element to the immediately adjacent portions of the sign character, whereby the illumination of such portions is approximately the same as the illumination of portions more distant with relation to the light giving element.

Generally speaking, the light where reflected is reflected at such angles that the rays will in part pass through the sign character at an angle but little removed from the perpendicular with relation to the plane of the sign character, while other rays pass through the sign character, at a considerably greater angle, so as to illuminate the sides of the raised character and the light is distributed approximately uniformly by means of the screens introduced between the sources of light and the sign characters. It is found in practice that it is not advisable to direct the light rays actually perpendicular to the plane of the sign character, for the letters are liable to then unduly blur as seen by the observer. Furthermore, the provision of ridges or other prismatic forms on the inner walls of the sign characters contributes to the brilliancy of illumination, and the brilliancy of the letters or other characters when viewed by daylight.

What is claimed is:—

1. In an illuminated sign, a sign character of light transmitting material having the strokes of the character in relief and each with one face prismatic throughout and otherwise of constant thickness, light giving means back of the visible face of the sign character, reflecting means in partial surrounding relation to the light giving means and constructed to direct light from the light giving means through the strokes of the sign character, and light transmitting and toning down means between the light giving means and the sign character and related to the reflector to permit reflected light to pass to the strokes of the sign character substantially without interference by any part of said light transmitting and toning down means, and said last-named means where presented toward the light giving means being reflecting to direct the light striking thereagainst to the first-named re-

flector to be again reflected thereby to and through the strokes of the sign character, said light transmitting and toning down means being constructed to transmit a portion of the light reaching it unmodified and directly to and through the strokes of the sign character.

2. In an illuminated sign, a sign character of light transmitting material having its strokes in relief with one face prismatic throughout, light giving means back of the sign character, a plurality of angularly related and substantially flat reflectors surrounding the light giving means and shaped to direct light therefrom to and through the strokes of the sign character, and perforated light-screening means between the light giving means and the sign character and of a length and breadth to cover the light giving means from substantially all angles of direct vision through the strokes of the sign character.

3. In an illuminated sign, a sign character of light transmitting material having the strokes in relief with the rear faces of the strokes prismatic, light giving means on the side of the sign character remote from that to be observed, reflectors for directing light from the light giving means to and through the strokes of the sign character, and perforated light screening means between the light giving means and the sign character and located substantially in non-interfering relation to light coming from the reflectors, said perforated light screening means being provided with supporting means attenuated where in the path of light rays directed to a stroke of the sign character, and said light screening means where presented toward the light giving means being reflecting.

4. In an illuminated sign, a sign character of transparent material with the strokes in relief and each with one face prismatic throughout, light reflecting means back of the sign character, light giving means also back of the sign character and related to the reflectors to cause light reaching the latter from the light giving means to be directed through the strokes of the sign character, said light giving means being located within the limits defined by the upper and lower margins of the sign character, and light reducing means pervious to direct rays of light from the light giving means to and through the strokes of the sign character without modification of such direct rays and intermediate of the light giving means and the strokes of the sign character in spaced relation to both and having a spread to interpose between the observer and the source of light from substantially all points of direct vision through said strokes of the sign character toward the light giving means and limited in the extent of spread to be in substantially non-interfering relation to light

reaching the character strokes from the reflecting means.

5. In a sign, a sign character of transparent material having the strokes in relief and prismatic throughout on the rear faces, light giving means back of the sign character and located within the limits defined by the upper and lower margins of the sign character, reflecting means in partial surrounding relation to the sign character, and light transmitting and toning down means between the light giving means and the strokes of the sign character and interior to and spaced from the reflecting means, said light transmitting and toning down means being of a height and breadth with respect to the light giving means, the reflecting means and the strokes of the sign character to interpose in the direct line of vision toward the light giving means through the strokes of the sign character at substantially any angle thereto and to be in substantially non-interfering relation to the reflecting means.

6. In a sign, a sign character having hollow strokes of transparent material in convex relief with the inner faces of the strokes prismatic throughout, light giving means at the rear of the sign character, reflectors in partial surrounding relation to the light giving means, said reflectors having substantially flat multi-directional reflecting surfaces to reflect light from the light giving means through the strokes of the character at various angles, and perforated light screening means of opaque material between the light giving means and the sign character and having a breadth and height to interpose between the light giving means and the eye of an observer from substantially any angle of direct vision through the strokes of the sign character and having the margins in spaced relation to the reflecting surfaces to be in substantially non-interfering relation with reflected light directed toward the strokes of the sign character from the light giving means.

7. In a sign, a sign character having strokes of light transmitting material in relief and hollow with the rear faces of the strokes prismatic throughout, straight reflectors about the margins of the rear face of the character in acute angular relation thereto, light giving means back of the sign character located to be partially surrounded by the reflectors, and light screening means constructed to tone down the light and located between the light giving means and the rear face of the sign character with marginal portions in spaced relation to the reflectors and having a length and breadth to interpose between the eye of an observer in front of the sign character and the light giving means at substantially all angles of

direct vision through the strokes of the sign character.

8. A sign having sign characters with hollow strokes of light transmitting material in relief and prismatic over the entire inner surfaces of the strokes and arranged on opposite faces of the sign, reflectors adjacent to the inner wall of each sign character and arranged about the margins thereof at acute angles to the general plane of the inner wall of the sign character, light giving means interior to the space defined by the reflectors and in position to direct light by way of the reflectors through the sign characters on opposite faces of the sign, and light screening means constructed to tone down the light and located between each sign character and the light giving means and of a length and breadth to interpose between the eye of an observer in front of the sign character and the light giving means from substantially all angles of direct vision through the strokes of the sign character.

9. A sign having sign characters on opposite faces, each with strokes in relief, and prismatic throughout the rear faces of the strokes, illuminating means intermediate of the faces of the sign containing the sign characters and in position for direct illumination of the strokes of the sign character, reflectors in partial embracing relation to each source of light and in multi-angular relation to the sign characters to reflect light from the source of illumination at various angles through the strokes of the sign character, and light toning down means for each sign character interposed between the illuminating means and the strokes of the sign character and of a length and breadth to come between the eye of an observer of the sign and the illuminating means from substantially all angles of direct vision through the strokes of the sign character.

10. In a sign, a sign character having its strokes of light transmitting material in hollow relief and prismatic throughout the rear faces of the strokes, illuminating means back of the sign character in position to directly illuminate the strokes of the sign character, reflecting means for the indirect illumination of the sign character from the illuminating means, and light toning down means in the path of direct illumination of the sign character from substantially all angles of direct observation of the illuminating means through the strokes of the sign character, said toning down means being related to the reflecting means to substantially equalize the light reaching the strokes of the sign character both directly and indirectly.

11. In a sign, a sign character having reflector strokes of light transmitting material with the inner surface thereof dispersive of

light, light giving means at the rear of the sign character in position to directly illuminate the strokes of the sign character, reflecting means positioned with respect to the light giving means and the strokes of the sign character to illuminate the sign character by reflected light and shaped to direct the reflected light at various angles through the strokes of the sign character, and light transmitting and toning down means in the path of direct illumination of the strokes of the sign character, the said light transmitting and toning down means being re-

lated to the sign character and the light giving means to substantially equalize the illumination of the sign character by the light giving means.

In testimony, that we claim the foregoing as our own, we have hereto affixed our signatures in the presence of two witnesses.

ROY R. WILEY.

WALLACE K. WILEY.

WILLIAM S. HOUGH, JR.

Witnesses:

EUGENE CARY,

GLENN A. STOCKWELL.

Defendants' Exhibit "O."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "O." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

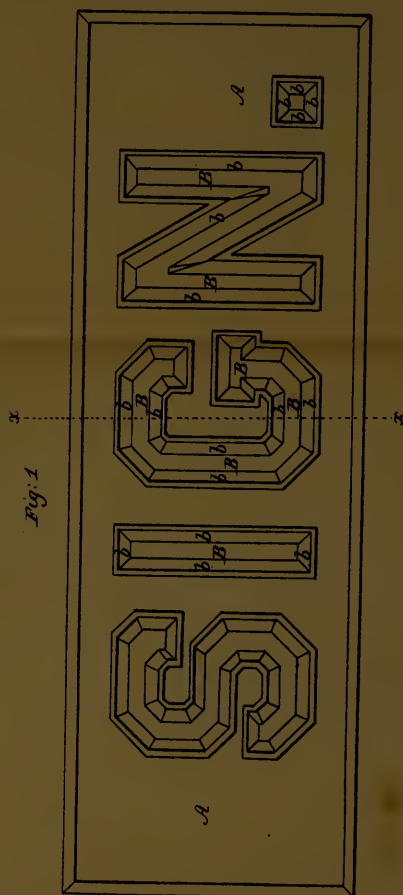
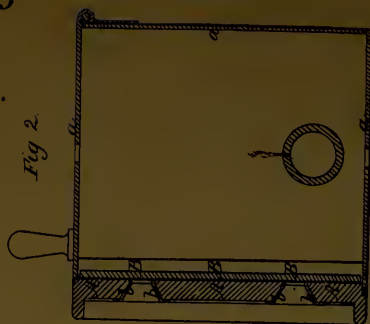
Defendants' Exhibit "P."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "P," Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

No. 1,191.
32,195

Sign
Patented Apr. 30, 1881.



Witnesses
C. W. Couran
[Signature]

Inventor,
Wm. B. Little

UNITED STATES PATENT OFFICE.

WILLIAM B. LITTLE, OF NEW YORK, N. Y.

SIGN.

Specification of Letters Patent No. 32,195, dated April 30, 1861.

To all whom it may concern:

Be it known that I, WILLIAM B. LITTLE, of New York, in the county and State of New York, have invented a new and Improved Sign; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, making a part of this specification, in which—

Figure 1, is a front view of my improved sign. Fig. 2, is a transverse section taken in the vertical plane indicated by the red line *x, x* in Fig. 1.

Similar letters of reference indicate corresponding parts in both figures.

My invention and improvement in signs refers more especially to those which are used for out-door purposes, the object being to produce a sign which will be both useful and ornamental as a day, and a night sign, and by the aid of a light placed behind it at night the lettering will be visible and intelligible for some distance.

To enable those skilled in the art to make and use my invention I will proceed to describe its construction and operation.

My improved sign may be constructed wholly or partially of metal.

In the drawings, A represents the sign board, behind and secured to which is a box *a, a, a*, which should be made of thin sheet metal with one of the sides hinged so that access can be had to the interior of the box. The top and bottom of this box should be perforated so as to allow a draft of air to circulate through the box. The sign board A is made of any suitable wood and the letters forming the sign are marked out on this board and then cut through the board, the edges *b, b*, of the letters flaring or beveling outward as represented in the drawings.

When the letters are each cut through the board A, as described, a plate of semi-transparent glass B, or other suitable substance which is semi-transparent is placed at the back of board, A, behind the letters as seen in Fig. 2, and suitably secured in its place.

After the outside surface of the sign is painted, the flaring edges of the letters,

forming the sign, are gilded, bronzed, silvered or covered with any suitable surface which is found most suitable for reflecting light falling upon it from the outside or inside of the sign board.

Instead of forming the flaring letters by beveling the edges of the sign board, the letters may each be made of metal, cast with these beveled edges and with flanges projecting from their flaring edges. The letters may now be cut roughly out on the sign board A and these cast letters introduced and secured by screws or otherwise to board A. The flaring edges of the cast metal letters should be polished or finished up as described for the edges of the letters which are simply cut into the sign board.

A sign may thus be constructed which will present a neat and ornamental appearance as a day sign, and by placing a light behind the letters at night, as represented in Fig. 2, the entire surface of the letters will be illuminated in consequence of the light shining through the glass B, forming the back of the letters, on the beveled metallic surfaces forming the edges *b, b*, of the letters.

The back part of the sign board A, being closed in by the box *a, a, a* the light will be confined within this box and only shine through the semi-transparent backs of the letters.

The perforated gas tube C, represented in Fig. 2 which extends longitudinally through the box will be found more suitable for my sign than single tube light.

I am aware that transparent or illuminating block letters, projecting from the sign have been used and these I disclaim.

Having thus described my invention what I claim as new and desire to secure by Letters Patent is—

The construction of illuminated signs in the particular manner herein represented and described.

WM. B. LITTLE.

Witnesses:

C. W. COWTAN,
M. M. LIVINGSTON.

Defendants' Exhibit "Q."

[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "Q." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

J. HATCHER.
ILLUMINATED SIGN.
APPLICATION FILED APR. 30, 1904.

NO MODEL.

Fig. 1.

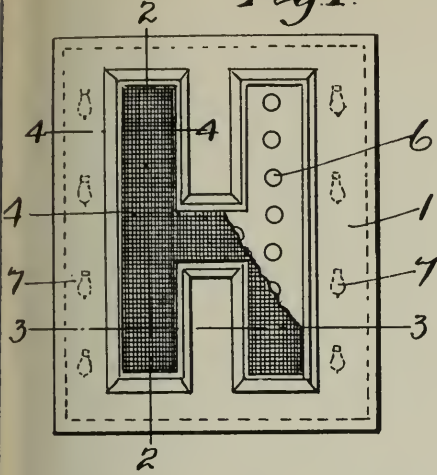


Fig. 2.

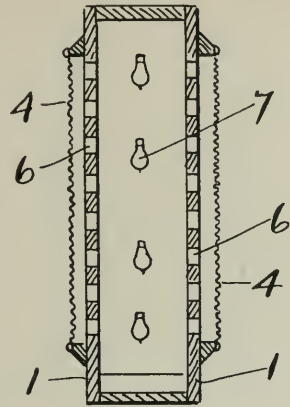


Fig. 3.

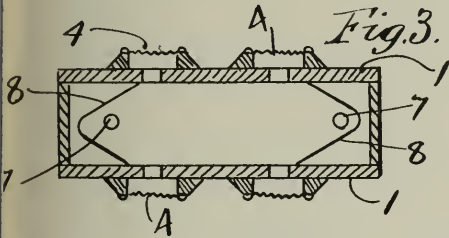


Fig. 6.

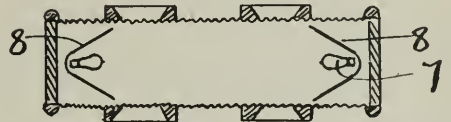


Fig. 4.

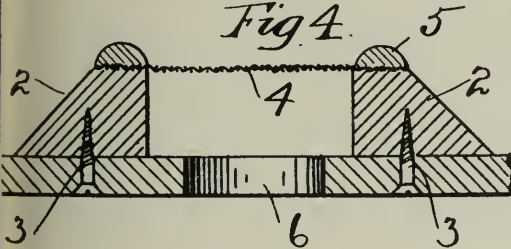


Fig. 7.

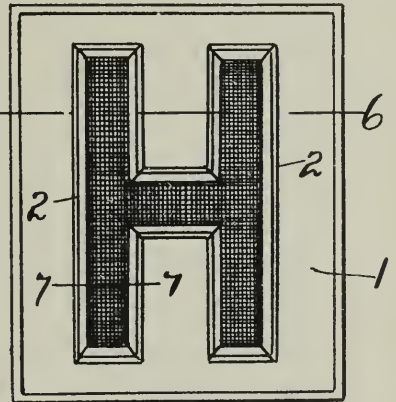
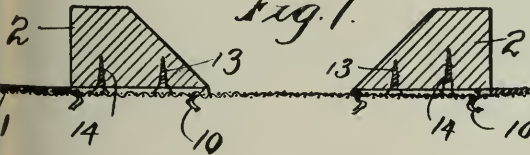
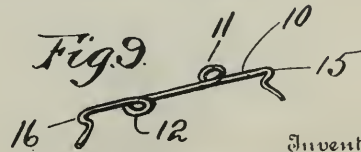


Fig. 9.



Inventor

Joseph Hatchner

Witnesses

George L. Miner
Ed. F. Gardner

Fig. 8.

By

Howard E. Parlow

Attorney

UNITED STATES PATENT OFFICE.

JOSEPH HOTCHNER, OF PROVIDENCE, RHODE ISLAND.

ILLUMINATED SIGN.

SPECIFICATION forming part of Letters Patent No. 789,139, dated August 30, 1904.

Application filed April 30, 1904. Serial No. 205,766. No model.

To all whom it may concern:

Be it known that I, JOSEPH HOTCHNER, a resident of the city of Providence, in the county of Providence and State of Rhode Island, have invented certain new and useful Improvements in Illuminated Signs; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and to the figures of reference marked thereon, which form a part of this specification.

This invention relates to illuminated signs, and has for its object to construct raised characters for signs so as to allow the light to shine through the center portion of said characters from the back thereof and at the same time to give the character the appearance by day of being carved from solid material, the means of illuminating being entirely concealed.

Another object is to construct the raised portion of the character by securing strips of material, such as molding or the like, to the backing, thus forming the outline of the character having a hollow center portion, said center portion being formed on or covered by gauze wire that may be gilded the same as the rest of the character and through which wire light may shine for the purpose of illuminating the sign at night. Thus the characters are made to present a handsome and rich appearance by day and are capable of being brilliantly illuminated by night by means that are concealed and away from the action of the wind and weather.

With these and other objects in view the invention consists of certain novel features of construction, as will be more fully described, and particularly pointed out in the appended claims.

In the drawings, Figure 1 is a front view of my illuminated sign, showing the letter "H" with its center portion covered with gauze wire, said wire being partly broken away to show the holes through the backing of the sign through which light may enter to illuminate said letter. Fig. 2 is a longitudinal section of said sign on line 2 2 of Fig. 1. Fig. 3 is a transverse section on line 3 3 of Fig. 1, showing the light-reflector on the interior

of the hollow box. Fig. 4 is an enlarged transverse section on line 4 4 of Fig. 1, showing the hollow portion of the letter and gauze wire across its outer face covering said hollow portion. Fig. 5 is a modification showing a front view of a letter constructed on a gauze-wire background, said letter being formed in outline by securing molding or strips of material on said background, the surface of the main portion of said background being painted or the mesh being otherwise filled in, leaving the gauze wire in the center portion of the letter only, the mesh of said center portion being left open to allow the light to shine therethrough. Fig. 6 is a transverse section on line 6 6 of Fig. 5, showing the lamps and means of reflecting the light therefrom. Fig. 7 is an enlarged view on line 7 7 of Fig. 5. Fig. 8 is a detail view showing the construction of a special design of sectional molding which may be used in the construction of the outline of letters, also illustrating the means of attaching said molding to the wire background. Fig. 9 is an enlarged view in detail showing a wire clamp or fastener by which the molding is secured to the wire background.

In the drawings, Figs. 1 to 4, inclusive, show one manner of constructing the backing, in which 1 is the background formed into the shape, preferably, of a thin hollow box having two broad flat faces and which may be constructed of wood or any other suitable material. On two of the faces of this box are secured raised characters, the letter "H" being shown in the drawings. This letter is formed in outline on the backing 1 by strips of molding 2 or the like, having beveled edges, said strips being secured to said backing by screws 3 or other suitable fastenings. Across the top face of this letter is secured gauze wire 4 or other similar material, which is held in place around the top edge of said letter by screws or nails, the heads of said fastenings then being covered by the molding 5. At 6 are holes or apertures made through the backing for the admission of light to the center portion of the letters from within the box. Inside of this box and on each of two of its sides is placed a row of electric lights 7 7, back of which lights is arranged a

... which may be made of metal or other suitable material. This reflector throws the light from said lamps toward the center of the hollow box and through the apertures 6, causing the face of the letter to be brilliantly illuminated. It is found in practice that the light as it comes through the apertures 6 into the hollow portion of the letter is diffused by the fine mesh of the gauze wire, and the light is nicely distributed over the face of the letter.

Figs. 5, 6, and 7 illustrate another manner of forming the background for the letters. The broad idea of constructing the raised letter in outline on the backing and providing the center portion of the letter with gauze wire, through which light may shine, is the same as the letter described above. In these figures, however, the construction of the background is illustrated as being made entirely of gauze or wire of a fine mesh, and to this wire background is secured the strips of material 2, which form the outline of the letters. After the letters are secured to this backing 1 the background is painted over or the mesh otherwise filled in all around said letters, making the surface opaque, the mesh in the gauze in the center portion of the letter not being filled in, but simply gilded to compare with the rest of the letter and to allow the light to shine through that portion only. In this letter (see Fig. 7) the molding may be beveled inwardly to the wire-gauze, which is located at the bottom of the hollow center portion of said letter. The molding or strip of material used in the forming of my raised sign-letters, as above described, is preferably constructed in sections, each section or block being partially separated from the whole strip, that may be easily broken apart, as illustrated in Fig. 8. These sections may be made in a great variety of forms, either spherical, rectangular, square, oblong, or, in fact, any shape desired. The different sections, owing to the construction of the strip, may be readily disengaged at the point desired, thus facilitating the construction of this herein-described form of letters.

To facilitate the attaching and detaching of these letters to and from the wire backing, I have constructed the fastening device. (Best illustrated in Fig. 9 at 10.) The fastener is preferably made of wire bent so as to form two eyes 11 and 12. These eyes are formed one on each side of the main portion of the wire, so that when the fastening-screws 13 and 14 (see Fig. 7) enter the wood there-through they will be out of line with each other to prevent splitting the letter. The ends of the fastener are bent down, forming shoulders 15 and 16, which enter the mesh of the wire backing, and the letters are thereby securely held in place and may also be readily detached from said background.

My construction of an illuminated sign is extremely simple, inexpensive, and practical. By the arrangement of lights within the hollow box and the reflector behind them the light is thrown into the center of the letter, which is thus brilliantly illuminated. The lights thus arranged are completely hid from view when the sign is in position and always under cover and protected from the action of the weather, the essential feature of my construction being that the letters by day present the handsome and showy appearance of solid carved raised letters without showing any means of being illuminated by night. By securing these letters to a wire backing the sign is made very light in weight, one face of which may be hinged, if desired, so as to be swung open, making it possible to get at the interior of the sign for repairs without having to take the sign apart. The letters made by my improved construction will not warp or break, as the molding that forms their outline always runs lengthwise of the grain.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. In a device of the character described, a background, raised characters secured to said background and gauze wire covering the middle portion of said characters for the purpose of illuminating said characters from the back thereof.

2. In a device of the character described, a backing, characters raised in outline on said backing and gauze wire covering the middle portion of said raised characters for the purpose of illuminating said characters from the back thereof.

3. In a device of the character described, a backing, characters raised in outline on said backing forming a hollow center portion, and gauze wire covering said hollow center portion for the purpose of giving said character the appearance of a raised carved letter and also to admit light therethrough from the back.

4. In a device of the character described, a backing, a character raised in outline by strips of material placed around its outer edge, said strips being secured to said backing forming a hollow center portion between the said strips, and gauze wire covering said hollow center portion for the purpose of giving it the appearance by day of a raised carved character and also to admit light therethrough from its back by night.

5. In a device of the character described, a backing constructed of gauze wire, a character raised in outline by strips of material placed around its outer edge, and means for securing said strips to said backing to form a hollow center portion between the said strips, the mesh of said wire background being filled in all around the characters leaving a gauze-wire

center portion for the purpose of admitting light from the back to illuminate the face of said characters.

6. In an illuminated sign, a hollow box, 5 lamps within said box, a reflector for throwing the light from said lamps toward the center of the box, a raised character in outline on the face of said box, gauze wire covering the middle portion of said raised character for the 10 purpose of allowing the light to shine there-through and illuminate the face of said character.

7. In an illuminated sign, a hollow box, lamps within said box, means for reflecting 15 the light from said lamps toward the center of said box, one or more of the faces of said box being covered with gauze wire forming a background, and characters raised in outline and secured to said background, the mesh of the 20 wire background being filled in making the same opaque leaving openings only through the gauze wire in the center portion of the

raised characters for the purpose of admitting light to illuminate the face of said characters.

8. In an illuminated sign, a hollow box, 25 lamps within said box, means for reflecting the light from said lamps toward the center of said box, one or more of the faces of said box being covered with gauze wire forming a background, and characters raised in outline on 30 said background by strips of material leaving a hollow center portion, the mesh of the wire background being filled in making the same opaque, leaving openings only through the gauze wire in the center portion of the raised 35 characters for the purpose of admitting light to illuminate the face of said characters.

In testimony whereof I have hereunto set my hand this 29th day of April, A. D. 1904.

JOSEPH HOTCHNER.

In presence of—

HOWARD E. BARLOW,
E. I. OGDEN.

Defendants' Exhibit "R."

[Endorsed]: No. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "R." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

R. W. CLARK.
SIGN.

APPLICATION FILED AUG. 24, 1903.

NO MODEL.

Fig. 1.

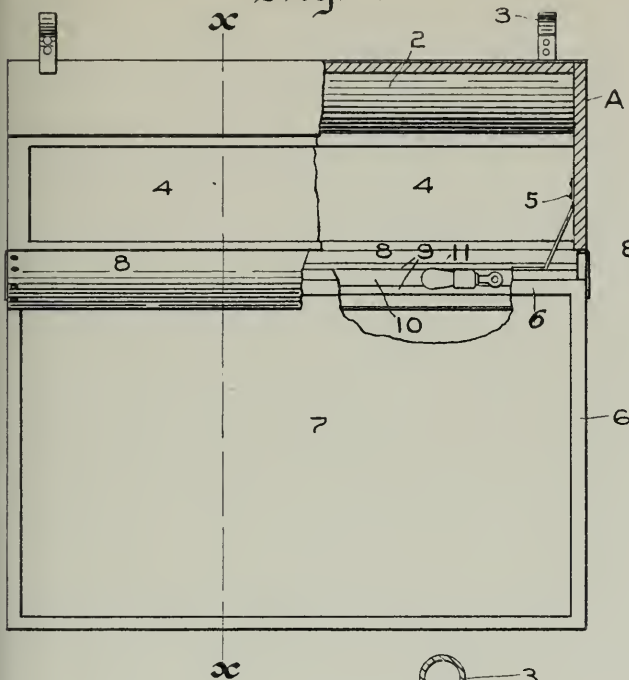


Fig. 2.

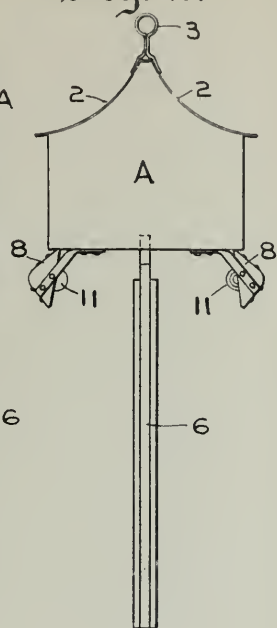
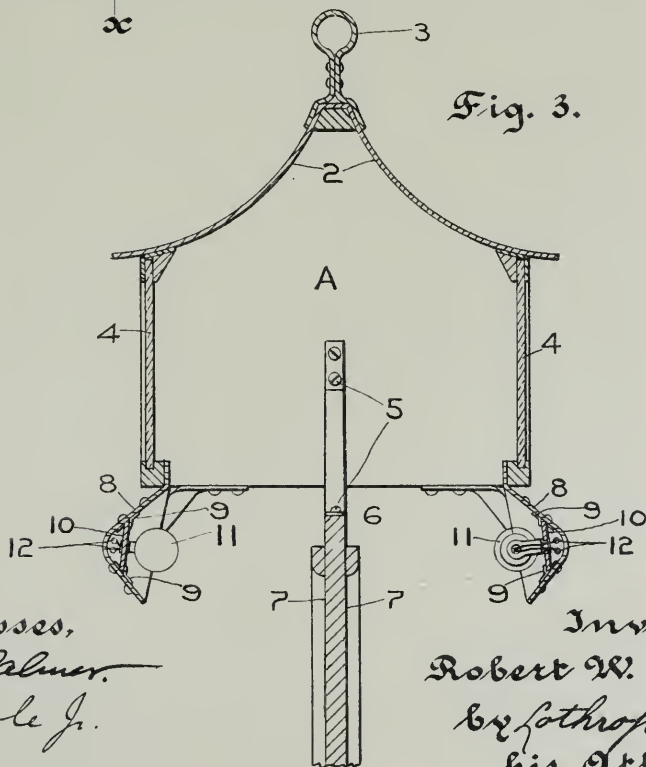


Fig. 3.



Witnesses,
W. H. Palmer.
H. B. Cole Jr.

Inventor,
Robert W. Clark.
By *John H. Johnson*
his Attorneys.

ROBERT W. CLARK, OF ST. PAUL, MINNESOTA, ASSIGNOR OF ONE-HALF
TO HENRY J. GILLE, OF ST. PAUL, MINNESOTA.

SIGN.

SPECIFICATION forming part of Letters Patent No. 775,295, dated November 22, 1904.

Application filed August 24, 1903. Serial No. 170,532. (No model.)

To all whom it may concern:

Be it known that I, ROBERT W. CLARK, a citizen of the United States, residing at St. Paul, in the county of Ramsey and State of Minnesota, have invented certain new and useful Improvements in Signs, of which the following is a specification.

My invention relates to improvements in signs, its object being particularly to provide improved means for supporting and illuminating oppositely-disposed transparent signs and an intermediate display-sign.

To this end my invention consists in the features of construction and combination hereinafter particularly described and claimed.

In the accompanying drawings, forming part of this specification, Figure 1 is a front elevation of my improved sign, partially broken away. Fig. 2 is an end elevation of the same, and Fig. 3 is a section on line *x x* of Fig. 1.

In the drawings, A represents a bottomless frame or hood of general inverted-U shape in cross-section, having a top 2 and supporting-hangers 3. In the opposite sides of the hood are transparent signs 4. Centrally supported in the framework in a suitable manner, as by means of the screws 5, is a downwardly-extending display-sign 6, having upon opposite sides suitable display-surfaces 7. In order to throw rays of light through the transparent signs, as well as against the display-sign, I provide the lamp-supporting plates 8, depending from the framework below the transparent signs. The plates 8 are preferably curved, as shown, and slidably support, as by means of guides 9, lamp-supporting slides 10. The lamps 11 are suitably supported at desired intervals upon the outer face of the slide 10, the wires 12, connected with the lamps, running through the space at the rear of the plate 10, as illustrated in Fig. 3, said wires thus being protected from injury.

In operation each reflector will throw the rays of light from its supported lamps against the adjacent display-surface and through the hood above the display-sign to the opposite transparent sign. The other reflector will similarly light the display-surface adjacent to it and the transparent sign upon the opposite

side of the frame. The lamp-supporting slide 10 will act as one facet of the reflector-plate.

Having now described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. The combination, with oppositely-disposed transparent signs and an intermediate display-sign, of illuminating means upon each side of said display-sign, and a reflector arranged in position to throw rays of light from said illuminating means against the adjacent surface of said display-sign, and against the opposite transparent sign.

2. In combination, with an open-bottom framework, transparent signs arranged in the opposite sides of said framework, a display-sign centrally depending from said framework, illuminating means arranged upon the opposite sides of said display-sign, reflectors arranged in position to throw the rays of light from said illuminating means against the faces of said display-sign and over said display-sign against the opposite transparent signs.

3. The combination, with a bottomless hood and a depending display-sign, of transparent signs arranged in the opposite sides of the hood, illuminating means supported by the hood, a reflector arranged in position to throw rays of light from the illuminating means against the inner face of one of the transparent signs, and a reflector arranged in position to throw rays of light from said illuminating means against one of the faces of the display-sign.

4. In combination, a bottomless hood, transparent signs arranged in the opposite sides of the hood, a centrally-depending display-sign, illuminating means supported by the hood, and reflecting means arranged in position to throw rays of light from the illuminating means against the inner faces of the transparent signs and against the faces of the display-sign.

In testimony whereof I affix my signature in presence of two witnesses.

ROBERT W. CLARK.

Witnesses:

H. S. JOHNSON,
EMILY F. OTIS.

Defendants' Exhibit "S."

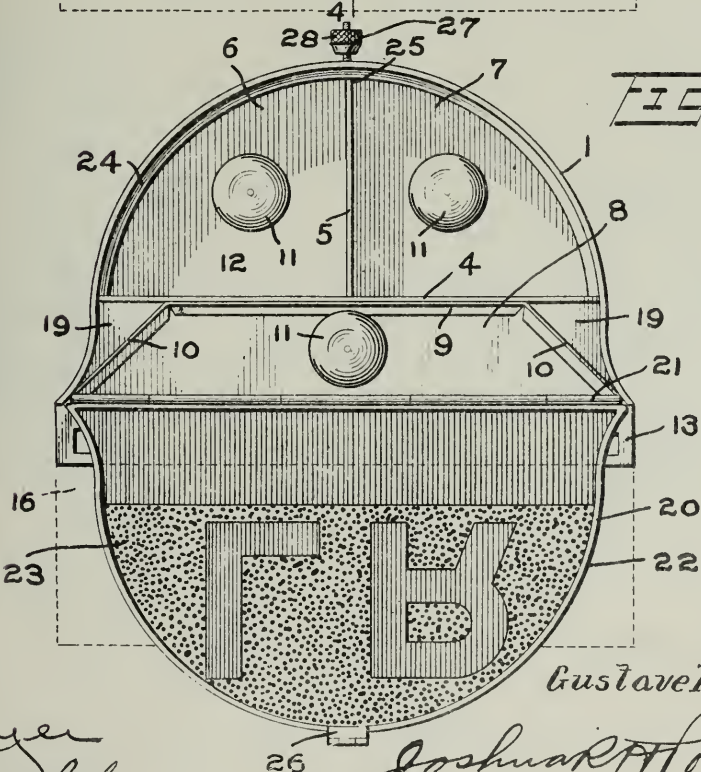
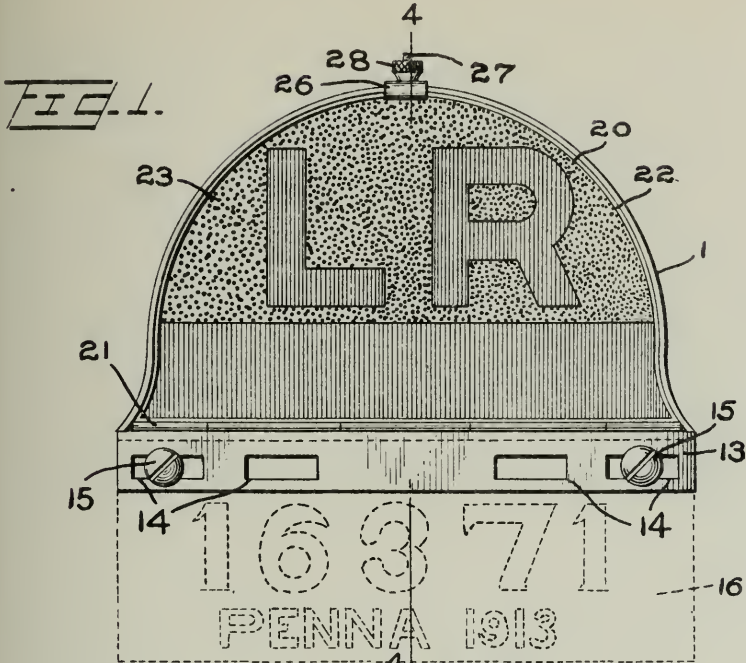
[Endorsed]: Nos. 507 and 577. U. S. Dist. Court, Nor. Dist. Calif. Deft. Exhibit "S." Filed 12/6/21. Maling, Clerk.

No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 11, 1922. F. D. Monckton, Clerk.

,070,028.

Patented Aug. 12, 1913.

2 SHEETS—SHEET 1.



Inventor

Gustave Fortmann

Witnesses

P. Moyer
J. H. Hensel

Joshua R. Hottel

FIG. 3.

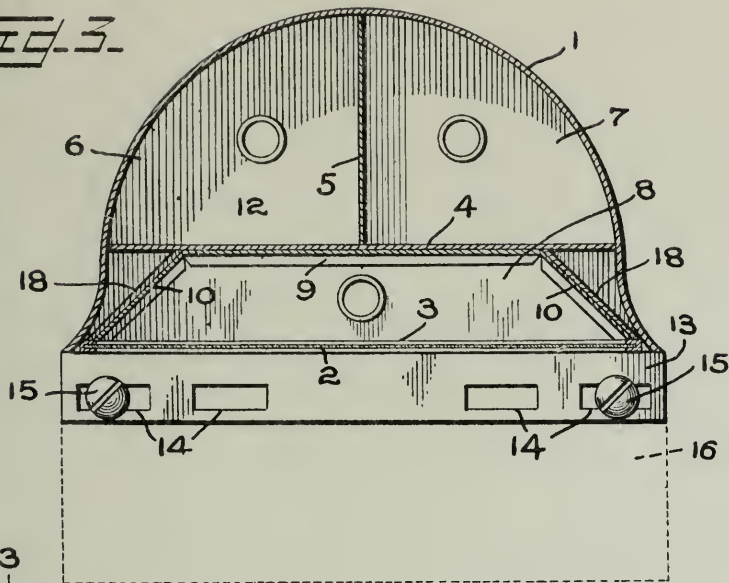


FIG. 4.

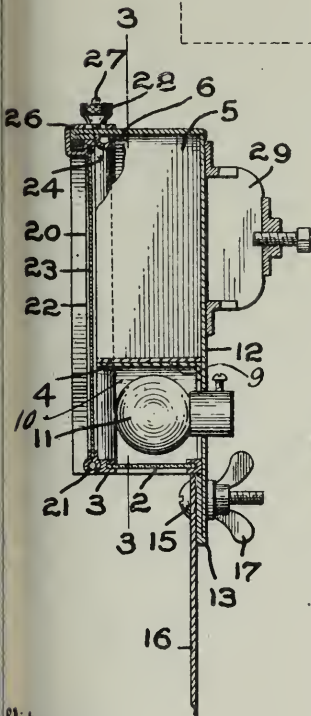
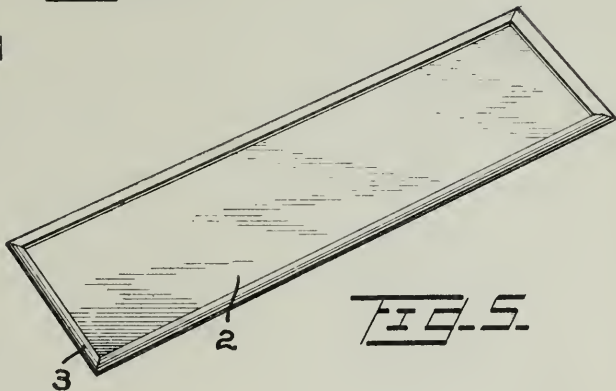


FIG. 5.



Inventor

Gustave Fortmann

Witnesses

Phoner
W. Krenkel

By *Joshua R. H. Tott*
Attorney

UNITED STATES PATENT OFFICE.

GUSTAVE FORTMANN, OF PHILADELPHIA, PENNSYLVANIA, ASSIGNOR TO AUTO SAFETY SIGNAL LAMP COMPANY, A CORPORATION OF DELAWARE.

SIGNALING DEVICE.

1,070,028.

Specification of Letters Patent.

Patented Aug. 12, 1913.

Application filed December 6, 1912. Serial No. 735,243.

To all whom it may concern:

Be it known that I, GUSTAVE FORTMANN, a citizen of the United States, residing at Philadelphia, in the county of Philadelphia and State of Pennsylvania, have invented certain new and useful Improvements in Signaling Devices, of which the following is a specification.

My invention relates to improvements in signaling devices, and more particularly to an improved combined signal lamp and license tag holder adapted to be supported on a vehicle, and which is adapted to signal to a car in the rear which direction the vehicle is to turn and also illuminate the license tag.

A further object is to so construct a device of this character as to prevent any light from getting behind the license tag and confining the rays of light directly upon the tag.

With these and other objects in view, the invention consists in certain novel features of construction and combinations and arrangements of parts as will be more fully hereinafter described and pointed out in the claim.

In the accompanying drawings: Figure 1 is a view in elevation illustrating my improved signaling device showing the license tag in dotted lines. Fig. 2 is a similar view showing the door open and thrown downward to disclose the interior construction. Fig. 3 is a view in longitudinal vertical section on the line 3—3 of Fig. 4. Fig. 4 is a view in section on the line 4—4 of Fig. 1 with a part of the vertical partition broken away, and Fig. 5 is a perspective view of the glass and its frame.

1 represents the casing of my improved signaling device which is of general semi-cylindrical form with the exception that the lower end is flared outward slightly, and is closed at its lower edge by means of a glass 2 secured in a metal frame 3, the latter fixed in the casing preferably by solder. The casing 1 is divided by a horizontal partition 4 and a vertical partition 5 into three chambers 6, 7, and 8, respectively. The lower chamber 8 has a mirror strip 9 secured therein, the intermediate portion of said strip lying against the lower face of partition 4, and the ends of said mirror strip positioned at an angle as shown at 10, so that the

light from a lamp 11 located in chamber 8 is deflected downwardly, and the rays confined within certain limits.

The back plate 12 of casing 1 extends below the casing and forms a license tag support 13. This support 13 is provided with slots 14 for the reception of bolts 15 which are projected through openings in a license tag 16, and secured by thumb nuts 17. When the license tag is in position, the reflector strip 9 with its ends 10 serves to throw the light directly upon the tag, and as the tag is secured to the support 13 constituting a portion of the back plate, no light can get behind the tag, and hence the light will be only on the face of the tag, so that its number may be readily seen at night.

The ends 10 of the mirror strip 9 are reinforced by packing strips 18, and this construction is hid from view by covering plates 19 which also strengthen the construction.

A door 20 is connected at its lower edge by a hinge 21 with the frame 3 of glass 2. This door conforms in shape to the shape of the casing, and comprises an outer metal frame 22 confining a glass 23. This door when closed, fits snugly inside of the casing and bears against the plates 19 and against a rounded bead 24 secured to the inner face of the casing and extending through a recess 25 in partition 5. In other words, a continuous surface is provided inside the casing against which the metal frame 22 of the door bears, and at the free edge of said door, a bifurcated tongue 26 is located and engages a screw 27 on top of the casing, and is securely locked by means of a thumb nut 28 which is jammed against the same.

Each of the chambers 6, 7, and 8 is provided with an incandescent lamp 11, and these lamps are connected electrically by suitable controlling mechanism adjacent the driver or chauffeur, so that he can cause the lamps to become illuminated at will. The lamp 11 in chamber 8 is always lighted at night. The glass 23 in the door 20 is rendered partly opaque, and the rest of the glass is red, so that it shows red in front of chamber 8, and red letters "L" and "R" in front of chambers 6 and 7 respectively. Of course, this color might be changed to suit conditions, but it is preferable to have the red in front of chamber 8 which shows

the customary danger signal at the back of the car.

The letters "L" and "R" indicate that the vehicle is to turn to the left or right, and the chauffeur causes the lamps to become illuminated to signal to the car in the rear his intention.

On the back of the casing, a bracket 29 is secured, and is adapted to secure the signaling device to any approved supporting bracket on a vehicle. It will therefore be noted that my improved signaling device dispenses with the necessity for any rear light in addition to its function of signaling; and furthermore the construction above set forth insures a clear illumination of the license tag.

Various slight changes might be made in the general form and arrangement of parts described without departing from my invention, and hence I do not limit myself to the precise details set forth, but consider myself at liberty to make such changes and alterations as fairly fall within the spirit and scope of the appended claim.

Having thus described my invention, what

I claim as new and desire to secure by Letters Patent is.

A signaling device of the character described, comprising a casing of semi-cylindrical form and having a flared lower end, and a flat transparent bottom secured in said flared lower end, horizontal and vertical partitions dividing said casing into three chambers, lamps in said chambers, a door closing the front of said casing and containing signaling characters in front of the two upper chambers, a license tag support on the bottom of said casing at the rear thereof, and a mirror strip secured within the lower chamber with its intermediate portion against the horizontal partition and its ends at an angle extending to the lower edge of the casing, substantially as described.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

GUSTAVE FORTMANN.

Witnesses:

R. H. KRENKEL,
CHAS. E. POTTS.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit, Northern District
of California.

JOSEPH HOTCHNER,

Plaintiff,

vs.

FEDERAL ELECTRIC COMPANY, a California
Corporation,

Defendant.

**Stipulation Re Translation of French Patent No.
334,837.**

IT IS HEREBY stipulated by counsel for each
party hereto that the annexed translation is a true
translation of the French patent No. 334,837, dated
August 25, 1903, and granted to Hector Very.

CARLOS P. GRIFFIN,
Attorney for Appellant.

CHAS. E. TOWNSEND,
WM. A. LOFTUS,

Attorneys for Appellee.

Dated: San Francisco, California, this 3d day of
August, 1922.

[Endorsed]: No. 3860. United States Circuit
Court of Appeals for the Ninth Circuit. Filed
August 3, 1922. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 3860.

JOSEPH HOTCHNER,

Appellant,

vs.

FEDERAL ELECTRIC COMPANY et al.,

Appellees.

**Order Re Withdrawal from Files of French Patent
Patent No. 334,837 for Purpose of Translation.**

Good cause therefor appearing, it is hereby ORDERED that Mr. Carlos P. Griffin, counsel for the appellant, be and hereby is allowed to withdraw from the files Defendants' Exhibit "G" (French Letters Patent No. 334,837, in three parts, photographic copy), for the purpose of translation of said exhibit, the said exhibit and translation to be returned to the files within five days from date.

Dated: San Francisco, California, July 31, 1922.

WM. W. MORROW.

United States Circuit Judge.

Received the above-mentioned exhibit agreeably to said order.

CARLOS P. GRIFFIN,
Counsel for the Appellant.

[Endorsed]: No. 3860. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 31, 1922. F. D. Monckton.